

MT LEGISLATIVE HISTORY

Chapter 286 19 59

Bill (H) 29 S _____

Original bill & hist. NO C

H. Committee on Banking & Insurance

S. Committee on Insurance

Hearing Date(s) Jan 19 ✓ C

Hearing Date(s) Jan 19 ✓ C

Jan 20 ✓ C

Feb 12 ✓ C

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Feb 24 ✓ C

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Date Out Jan 20 ✓ C

Feb 24 ✓ C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

Chap.	Senate Bill	House Bill	Title	Page
			Refund of Such Charges on Prepayment; to Make Certain Acts Unlawful and Providing Penalties for Violations of This Act; Providing for Waiver and Severability.	701
283		Sub. 123	An Act Relating to Loans and Interest and Other Charges and Expenses on Loans; to Define "Consumer Type Loan Business" and Certain Other Terms; to Regulate and License the Business of Making Consumer Type Loans in the Amount of One Thousand Dollars (\$1,000) or Less; to Create the Office of Consumer Loan Commissioner, and to Provide for the Appointment and Compensation of a Consumer Loan Commissioner and to Prescribe the Powers, Duties, Authority, and Jurisdiction of Such Commissioner; to Authorize the Adoption and Promulgation of Rules and Regulations; to Make Certain Acts Unlawful and to Provide Penalties and Forfeitures for Violations of This Act; to Exempt Certain Businesses from the Provisions of This Act; to Prescribe Certain License and Other Fees; to Create a "Consumer Loan Administration Fund" to Be Used to Administer and Enforce the Provisions of This Act; to Provide for the Issuance, Refusal, Suspension and Revocation of Licenses; to Provide for the Refund of Certain Precomputed Charges Where a Loan Is Paid Prior to Maturity; to Authorize and Regulate the Issuance of Certain Insurance in Connection With Consumer Type Loans in the Amount of One Thousand Dollars (\$1,000) and Less; to Authorize Investigations and Examinations by the Commissioner and to Provide for Examination Fees; to Require Licensees to Keep Certain Records and to Make Certain Reports; to Regulate Wage Assignment; to Provide for Appeals from Any Action or Order of the Commissioner; and Repealing All Acts and Parts of Acts in Conflict Herewith.	715
284	Sen. Sub. for Sub. 426		An Act to Amend Section 81-433 of the Revised Codes of Montana, 1947, as Amended by Chapter 190, Laws of the Thirty-first Legislative Assembly of Montana, 1949, and by Chapter 229, Laws of the Thirty-second Legislative Assembly of Montana, 1951, Relating to Rental Rates of State Grazing Lands Upon the Animal-Unit-Month Basis; to Provide for an Increase in the Rental Rates of State Grazing Lands by Use of a New Formula for Computation of Such Rates, and to Provide for the Repeal of All Acts and Parts of Acts in Conflict Herewith, and Providing for an Effective Date of Said Act.	730
285		Sub. 15	An Act Prescribing Rules and Regulations for Numbering and Registering Motorboats and Vessels in the State of Montana; Defining Terms and Designating the Fish and Game Commission of the State of Montana as the State Agency Responsible for the Administration of said Act in the State of Montana; Providing Minimum Equipment Requirements for Motorboats and Vessels; Establishing Safety Regulations for the Use and Operation of Motorboats and Vessels in the State of Montana; Establishing Safety Regulations for the Use of Water-Skis, Surfboards and Similar Devices; Providing Penalties for Violation of Said Act; Repealing Sections 94-35-266, 94-35-267, and 94-35-268 of the Revised Codes of Montana, 1947, and All Acts and Parts of Acts in Conflict With This Act; Providing a Savings Clause and Effective Date.	732
286		29	An Act to Provide a Comprehensive Revision, Consolidation and Classification of the Laws of the State of Montana Relating to Insurance and to the Insurance Business; Regulating the Incorporation, Formation, and Affairs of Domestic Insurance Companies, Societies, and Associations, and the Admission of Foreign and Alien Insurance Companies, Societies, and Associations; Providing for Their Rights, Powers and Immunities, and to Prescribe the Conditions on Which Insurance Companies, Societies, and Associations Organized, Existing, or Authorized Under This Act May Exercise Their Powers; Providing for the Rights, Powers, and Immunities and to Prescribe the Conditions on Which Other Persons, Firms, Corporations, and Associations Engaged in or Affected by an Insurance Business May Exercise Their Powers; Providing for Service of Process on Unauthorized Insurers and the Conditions for Defense of Actions Brought Against Them in This State; Providing for Certain Powers, Rights, Obligations, Immunities, and Consequences as to Insurers and Other Persons Relative to Insurance Contracts and Annuity Contracts and Matters Arising from Such Contracts; Providing for the Imposition of Licenses, Fees, and Taxes, and for the Disposition Thereof; Providing for the Departmental	

Chap.	Senate Bill	House Bill	Title	Page
			Supervision and Regulation of the Insurance Business Within or Relative to This State; Providing Penalties for the Violation of This Act; Providing for an Effective Date of This Act; Repealing the Following Sections of the Revised Codes of Montana, 1947: Section 25-101; Sections 40-101 Through 40-105; Sections 40-201 Through 40-218; Sections 40-301 Through 40-323; Sections 40-401 Through 40-415; Sections 40-501 Through 40-517; Sections 40-601 Through 40-609; Sections 40-701 Through 40-706; Section 40-801; Sections 40-901 Through 40-905; Sections 40-1001 Through 40-1005; Sections 40-1101 Through 40-1118; Section 40-1204; Section 40-1301; Section 40-1302 as Amended by Section 1, Chapter 224, Laws of Montana, 1957; Sections 40-1303 Through 40-1333; Sections 40-1401 Through 40-1441; Sections 40-1501 Through 40-1517; Sections 40-1601 Through 40-1625; Sections 40-1701, 40-1702; Sections 40-1704 Through 40-1722; Section 40-1726; Sections 40-1801 Through 40-1820; Sections 40-1901 Through 40-1946; Sections 40-2001 Through 40-2012; Sections 40-2101 Through 40-2138; Sections 40-2201 Through 40-2212; Sections 40-2301 Through 40-2310; Sections 40-2401 Through 40-2412; Section 40-2413 as Amended by Section 1, Chapter 108, Laws of Montana, 1955; Sections 40-2414 Through 40-2416; and Sections 40-2501 Through 40-2513; Repealing All Acts and Parts of Acts in Conflict Herewith.	745

APPROPRIATIONS

House Bill	Title	Page
2	An Act to appropriate Money for the Legislative Assembly and for the Payment of Per Diem to the Officers and Attaches and for Incidental Expenses of the Thirty-sixth Legislative Assembly of the State of Montana.	1109
55	An Act Appropriating the Sum of Eighty-one Thousand, One Hundred Sixty-six Dollars and Sixty Cents (\$81,166.60) to Pay the Claim of Glenn Chamberlain, Minor Male Child, Which Claim Was Heard and Unanimously Approved and Allowed in Full by the State Board of Examiners on the 18th Day of December, 1958, for Injuries Received, to-wit: Total and Permanent Blindness in Both Eyes, and Complete Loss of the Index Finger of the Right Hand, on the 8th Day of May, 1956, in the Impact Area of the Montana National Guard Firing Range Near Harlowton, Montana, by Reason of the Negligence of the Montana National Guard in Leaving Unexploded 37-mm. Shells in the Impact Area, Not Posting the Same, Knowing Such Shells Were Attractive to Children; by Reason of Which Said Glenn Chamberlain, a Minor of Twelve (12) Years of Age on the 8th Day of May, 1956, Picked Up and Played With One of Said Unexploded 37-mm. Shells, which Exploded in His Hand Resulting in Said Injuries; Providing an Effective Date.	1110
119	An Act to appropriate Money from This State's Account in the Unemployment Trust Fund on Deposit With the Secretary of the Treasury of the United States of America, Limited to the Amounts Paid Into Said Fund Pursuant to Section 903 of the Social Security Act, as Amended, for the Construction of an Unemployment Compensation Commission Building Upon the Present Capitol Building Grounds, and for the Liquidation of Bonds Hereafter Sold to Obtain Funds for Such Construction, and, Further, Limiting the Period of Time Prior to the Obligation of Such Funds to a Period Not to Exceed Two Years From the Date of the Passage and Approval of This Act; Providing a Name for Said Building; and Providing an Effective Date.	1113
136	An Act to appropriate One Hundred Thousand Dollars (\$100,000.00) for the Operation and Expenses of the Legislative Council for the Period Beginning July 1, 1959, and Ending June 30, 1961, and to Provide for an Effective Date of This Act.	1114
142	An Act to Provide for the Reappropriation of the Balance Remaining in Account Number 766, of the Legislative Council, for the Period Beginning February 21, 1959, and Ending June 30, 1959, and to Provide for an Effective Date of This Act.	1114
169	An Act to appropriate Money for the Purchase of Cumulative Pocket Supplements of 1959, for the Revised Codes of Montana, 1947.	1115
268	An Act to appropriate Money for the Purpose of Refunding Inheritance Taxes Erroneously Paid to the State of Montana on the Death of Thomas E. Luebben Late of Dillon, Montana.	1115
314	An Act to appropriate Money for the Construction of Facilities Necessary for the Administration and Training of the Montana National Guard; Providing That the Appropriation Herein Shall Be Valid Notwithstanding the Provisions of the Budget Act.	1116

January 19, 1959

BANKING AND INSURANCE COMMITTEE

The Committee met at 10:30 A.M. with fourteen members present. Considerable discussion was held concerning introduction of the House Bill that was prepared and drawn up by Mr. Williams of Seattle, Washington. The previous legislature had appropriated \$25,000 for the preparation of this bill. Mr. McDonald sat in on the meeting.

A motion was made by Mr. Emmons and seconded by Mr. Paulsen that the Committee give unanimous consent to introduce the above House Bill by request. Motion carried.

A motion was made by Mr. Emmons and seconded by Mrs. Page to have the Summary of the above House Bill mimeographed for all members of the House and Senate due to the fact that the bill is of considerable length and it is to be introduced in printed form. Motion carried.

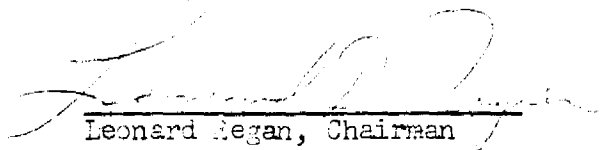
Motion was made and seconded for adjournment.

Above discussion concerned the following House Bill:

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE A COMPREHENSIVE REVISION, CONSOLIDATION AND CLASSIFICATION OF THE LAWS OF THE STATE OF MONTANA RELATING TO INSURANCE AND TO THE INSURANCE BUSINESS; REGULATING THE INCORPORATION, FORMATION, AND AFFAIRS OF DOMESTIC INSURANCE COMPANIES, SOCIETIES, AND ASSOCIATIONS, AND THE ADMISSION OF FOREIGN AND ALIEN INSURANCE COMPANIES, SOCIETIES, AND ASSOCIATIONS; PROVIDING FOR THEIR RIGHTS, POWERS AND IMMUNITIES, AND TO PRESCRIBE THE CONDITIONS ON WHICH INSURANCE COMPANIES, SOCIETIES, AND ASSOCIATIONS ORGANIZED, EXISTING, OR AUTHORIZED UNDER THIS ACT MAY EXERCISE THEIR POWERS; PROVIDING FOR THE RIGHTS, POWERS, AND IMMUNITIES AND TO PRESCRIBE THE CONDITIONS ON WHICH OTHER PERSONS, FIRMS, CORPORATIONS, AND ASSOCIATIONS ENGAGED IN OR AFFECTED BY AN INSURANCE BUSINESS MAY EXERCISE THEIR POWERS; PROVIDING FOR SERVICE OF PROCESS ON UNAUTHORIZED INSURERS AND THE CONDITIONS FOR DEFENSE OF ACTIONS BROUGHT AGAINST THEM IN THIS STATE; PROVIDING FOR CERTAIN POWERS, RIGHTS, OBLIGATIONS, IMMUNITIES, AND CONSEQUENCES AS TO INSURERS AND OTHER PERSONS RELATIVE TO INSURANCE CONTRACTS AND ANNUITY CONTRACTS AND MATTERS ARISING FROM SUCH CONTRACTS; PROVIDING FOR THE DISPOSITION OF LICENSES, FEES, AND TAXES, AND FOR THE DISPOSITION THEREOF; PROVIDING FOR THE DEPARTMENTAL SUPERVISION AND REGULATION OF THE INSURANCE BUSINESS WITHIN OR RELATIVE TO THIS STATE; PROVIDING PENALTIES FOR THE VIOLATION OF THIS ACT; PROVIDING FOR AN EFFECTIVE DATE OF THIS ACT; REPEALING THE FOLLOWING SECTIONS OF THE REVISED CODES OF MONTANA, 1947: SECTION 25-101; SECTIONS 40-101 THROUGH 40-105; SECTIONS 40-201 THROUGH 40-218; SECTIONS 40-301 THROUGH 40-323; SECTIONS 40-401 THROUGH 40-415; SECTIONS 40-501 THROUGH 40-517; SECTIONS 40-601 THROUGH 40-609; SECTIONS 40-701 THROUGH 40-706; SECTION 40-801; SECTIONS 40-901 THROUGH 40-905; SECTIONS 40-1001 THROUGH 40-1005; SECTION 40-1101; SECTION 40-1204; SECTION 40-1301; SECTION 40-1302 AS AMENDED BY SECTION 1, CHAPTER 221, LAWS OF MONTANA, 1957; SECTIONS 40-1303 THROUGH 40-1329; SECTIONS 40-1401 THROUGH 40-1441; SECTIONS 40-1501 THROUGH 40-1517; SECTIONS 40-1601 THROUGH 40-1625; SECTIONS 40-1701, 40-1702; SECTIONS 40-1704 THROUGH 40-1722; SECTION 40-1723; SECTIONS 40-1801 THROUGH 40-1820; SECTIONS 40-1901 THROUGH 40-1943; SECTIONS 40-2001 THROUGH 40-2012; SECTIONS 40-2101 THROUGH 40-2138; SECTIONS 40-2201 THROUGH 40-2212;

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SECTIONS 40-2301 THROUGH 40-2310; SECTIONS 40-2401 THROUGH 40-2412; SECTION 40-2413 AS AMENDED BY SECTION 1, CHAPTER 108, LAWS OF MONTANA, 1955; SECTIONS 40-2414 THROUGH 40-2416; AND SECTIONS 40-2501 THROUGH 40-2513; REPEALING ALL ACTS AND PARTS OF ACTS IN CONFLICT HEREAFTER."


Leonard Regan, Chairman

BANKING AND INSURANCE

January 19, 1959

The House Committee on Banking and Insurance held a joint public hearing with the Senate on House Bill No. 29, in Senate Room 408, at 3:00 P. M., January 19, 1959, with Senate Chairman Hagenston and House Chairman Regan presiding. Committee members of the House present were: Regan, Schwinden, Sheehy, Curry, Holecek, Jardine, Raundal, Rindy, Corcoran, Fjare, Kiff and Paulsen.

Mr. John J. Holmes, Commissioner of Insurance, appeared before the Committee and had Mr. Sheehy read a prepared paper on the preparation of House Bill No. 29. (Paper attached).

Mr. Louis Forsell appeared on behalf of the Attorney General's Office and stated all people were represented by his office, Mr. Holmes' Office and representatives from credit unions.

Mr. Clyde Gummow, Assistant Commissioner of Insurance, appeared and showed the original work draft prepared by Mr. Williams, and explained they had had eleven days of public hearings on the preparation of this bill.

The three persons present who would like amendments or possible changes in the bill as now written were:

Representative Jardine: Questions Section 33, Section 38, and others

William C. Campbell: Chapter 27, Section 612 - feels this information is quite important to the people and is an important source of revenue for newspapers

Henry Loble, Attorney: "Basically we are in favor of this bill and it is a necessity. Section 54 - too strenuous for some of the smaller companies - most of large companies could maintain \$400,000 in deposits but would be hard for smaller companies to maintain".

Raundal: Section 202, Line 25 -- Questions tax levied at the rate of 2% of the gross amount of such premium.

Others appearing in favor of the bill:

R. B. Richardson, Pres. of the Western Life Insurance Company
Roger Johnson, Office of State Auditor
Don Burns, Local Agent, Stock Fire Agents' Association
Leo Graybill, representing State Farm Mutual Co. and other small mutuals (representing groups in what turned out to be Chapter 24).

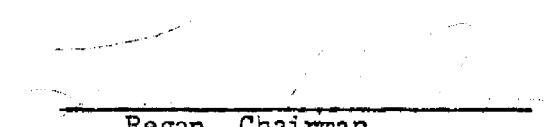
Senator Thiessen: Question: What is the definition of admitted assets? Gummow: Any property owned - bonds, stocks, investments allowed under code.

Joe McCaffery, Treasure State Life Insurance Company
William Clark, Treasure State Life Insurance Company
George Sarsfield, Attorney, Mutual Alliance (Mutual Fire and Casualty Companies)
Thomas Patterson, Counsel. Western Life Insurance Company

H. J. Luxan, Board of Fire Underwriters
John Riskin, Bureau of Casualty Underwriters
E. D. Patenaude, Stock Fire Agents' Association
John Vance, Wheat Growers' Mutual
Bill Rössiter, State Manager, United States Fidelity and Guaranty
Morris Sanford, Mutual Agents' Association
Lester Rutledge, representing Mr. Williams
Harry Jones, Deputy, Insurance Department

After the hearing and discussion, Chairman Regan asked Representative Jardine if he would like to meet with Commissioner Homes and Ass't. Commissioner Gummow who would go over the bill with him in detail.

Senator Durkee moved the meeting adjourn. Motion seconded by McDonnell and carried. The meeting adjourned at 4:35 P.M.



Regan, Chairman

January 19, 1959

A joint meeting of the Insurance Committees from the Senate and House was held in Room 408, January 19, at 3:00 P.M. The Chairman of the Senate Committee, Senator Hagenston, called the meeting to order. Roll call was taken and the following were present:

Senators: Hagenston, Thiessen, Groff, Durkee and McDonnell.
Representatives: Regan, Schwinden, Sheehy, Curry, Holecsek, Jardine, Raundal, Bindy, Corcoran, Fjare, Kiff, and Paulsen.

Also present at the meeting were Joe McCaffery and Bill Clark, representing Treasure State Life Insurance Company; George Sarsfield - Mutual Alliance; R. B. Richardson and T. P. Patterson - Western Life, American Life Convention and Life Insurance Association of America; H. J. Luxan - Board of Fire Underwriters; John Riskin - Bureau of Casualty Underwriters; Henry Loble - Reciprocal Insurers; E. D. Patenaude - Stock Fire Agents' Association; John Vance - Wheat Growers' Mutual; Bill Rossiter - U.S.F. & G. Morris Sanford - Mutual Agents' Association; Don Burns - Stock Fire Agents' Association; John Holmes - Insurance Commissioner; Clyde Gummow - Deputy; Harry Jones - Deputy; Roger Johnson - Deputy; Louis Forsell - Asst. Attorney General; Leo Grabell - Attorney from Great Falls.

This was a meeting to discuss and clarify any questions on the part of the two committees on House Bill No. 29. The Chairman suggested we hold an open discussion to obtain information from those who sat in during much of the hearings when the bill was drafted.

Mr. Holmes asked Mr. Forsell to read a paper giving a little history of House Bill 29 and outlining briefly the procedure which was followed in its preparation. He said that Mr. Forsell understood the code quite thoroughly and would probably be able to answer a lot of questions on it.

Mr. Forsell: The last Legislative Assembly in making this authorization, realized the need of the State of Montana for an effective regulation of insurance companies. We are fortunate to have had Mr. Robert Williams compile this code. He is in Seattle at the present, but if we need him to clarify any questions anyone might have regarding the code, we will be able to get him out here to assist. Mr. Clyde Gummow and Mr. Jones also understand the technicalities involved and would be in a position to answer any questions.

At this point, upon his request, Mr. Forsell was then excused from the meeting.

Mr. Gummow submitted a copy of Mr. Williams' work draft to show how much preliminary work went into the insurance code. He said Mr. Williams is a Montana boy, raised in Boulder, went to school in Helena and graduated from Montana law school. He is now in private practice in Seattle, is recognized by insurance companies nationally and internationally, has worked in 7 or 8 states, has been retained by the United Nations to work in Central America and understands insurance from the public viewpoint as well as the insurance viewpoint. All branches of insurance were represented at the hearings. Representatives from New York, Chicago, San Francisco, Lloyds of London and others. This code was thoroughly gone over and is believed to be the finest in the United States. There

will undoubtedly be changes and amendments to this code but it is our recommendation that unless absolutely necessary, that the code be enacted as it stands and amended later.

The Chairman expressed his hope that the members present would clear up any questions or doubts they might have now instead of waiting until it gets out on the floor. He pointed out that it costs \$7,000.00 to print this bill and will take three weeks to enroll. The printing company is holding the plates on this bill so the faster we can work, the better off we will be. The meeting was then open for questions.

Senator McDonnell asked if there were any in the room who were opposed to the Bill. A count was taken and three present were opposed - Mr. Jardine, Mr. Lobel and Mr. Campbell.

Mr. Jardine: I am opposed to Section 33 which provides the Commissioner may enter any agent's office and inspect his books and records. I do not believe that the commissioner should be able to go over my books just because I am a licensed agent.

Mr. Holmes: That is a little extreme. You have nothing to fear from that. I am not entirely in agreement with that myself but it is in there.

Mr. Jardine: The fact that they are granted the power to do it is my objection.

Mr. Richardson: I have worked with Mr. Holmes for three years and he has never exerted this power. He would have to have the power to examine companies. He may have to go into an agent's office but it would only be in a situation where the company was involved.

Johnson: Under Section 4011-5, the commissioner can examine any agency of any company doing business in this state.

Jardine: Does that Section provide that I would have to pay the examination charges?

Holmes: No. We would bill the company and not the agent for that expense.

Jardine: Section 38 offers immunity for testifying. I am not so sure it can be done. I do not believe the state can grant that immunity for Federal Courts or courts of other states.

Holmes: Mr. Williams is coming soon. We can ask him. However, it is in every code in the United States and why leave it out of the Montana code. I feel that question should be passed at the present time.

Loble: We feel that the procedure adopted was fair, but welcome the opportunity to make changes. We are not in favor of the code. We feel that Section 54 is a little too strict for some of the smaller companies. Most of the larger companies could maintain \$400,000.00. The smaller ones would have trouble. Some do not write very much insurance. They have asked me to state that \$400,000.00 was a little high. That is the sole objection that I have.

Holmes: Could you live with it for two years? If we could get it

through with no amendments, it would be better.

Loble: I will ask them to set up an amendment and present it to this committee if they want to go further on it.

W. M. Campbell - Montana Press Association: It has eliminated Chapter 27, Section 612 of the revised codes of 1935. We feel this information is quite important to the people and that it has been a good source of revenue for the newspapers. We believe that this section should be left in the Bill.

Holmes: Section 40-1326 provides that insurance companies make two publications of their annual statement every year. One in Helena, and one in a newspaper of general circulation in another part of the state. We feel this section would be doing very little if any good for the citizens of Montana. It is of very little value. It is a brief synopsis of their financial statement - just assets, liabilities, paid up capital, if a stock company, and surplus, also the fact that they are licensed to do business in the State of Montana.

Reagan: Do you think the insurance companies would publish these notices on their own?

Richardson: I doubt it. Some companies do publish their financial statement and will probably continue to do so but that is more for advertising rather than complying with law. It's up to the individual company.

Reagan: Who pays for this?

Richardson: On general insurance publications, we do. This is something the printers get most of the money for. We get \$6.00 for each publication. We are not getting any more for them now than we were years ago. As a revenue agent, it isn't very good.

Randell: Is the tax reduced? Last Legislature increased the tax from 2 to 2 $\frac{1}{4}$ % for 1957 and 1958.

Gummow: We felt we could do nothing else but put that tax in as 2%. Starting January 1st, premium tax is 2%.

Holecsek: How much difference would that make in dollars and cents?

Gummow: Around \$2,000.00 per year.

Richardson: The reason this was put in for two years was that we told you two years ago you would see a 10% increase because of more business. I believe that they have had that much increase without the increase of the extra $\frac{1}{4}$ %.

Craybell: If we aren't careful, we can lose an insurance code by an argument between the Ways and Means Committees. It seems to me that the insurance committees should not become involved in the rate problem. If the Ways and Means Committee takes any action, it can do so and establish any rate that will be adopted by the Legislature. I hope this matter may be treated as a Ways and Means problem.

Thiessen: What is the definition of "Admitted Assets"?

Gammow: Any property that they own, stocks and bonds, any investments that are allowed under the code - what they report to the commissioner as solid assets are admitted assets.

Chairman: I would like to give an opportunity to all the men representing various companies to make any remarks if they have any.

Wm. Clark: I have nothing more to say. We have a good code and we do not want to see it amended. However, if it is amended, we would add some amendments too.

George Sarsfield: We feel the same.

T. P. Patterson: Nothing to add. We have worked on this hard for two years. It represents companies having more than 98% of all the Life Insurance business. There are changes we would like to make but support this bill in the present form.

H. J. Luxan: There are some parts of the code that are not satisfactory to most people, but if the other companies can hold off amending it now, we are willing to go along with it. It is vital that Montana adopt a modern and complete set of insurance statutes. It represents a very fine piece of work.

Riskin: I'll go along with what Mr. Luxan said.

Loble: I support the code in its entirety but there are some changes we would like to see made later.

E. D. Patenaude: I have nothing further to offer than what has been said. My association supports the code as it is.

John Vance: We welcome this code with slight revisions.

Bill Rossiter: I sat in on a number of these hearings. An honest endeavor was made by everyone to correct things in the old code and draw up a bill that could be presented and put through in the best manner at this time and make any changes later. It should be supported by everyone.

Morris Sanford: I wholeheartedly support this bill. All of the various industries are supporting it. It is for a much better protection for our people in Montana.

Don Burns: We are all in agreement and would like to see the bill passed as proposed.

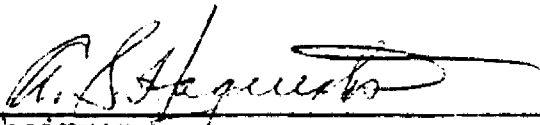
Roger Johnson: I hope the people see fit to pass the code. It has the blessings of the department.

Jones: I have been working under the old insurance laws for a number of years and feel that this insurance codification is long past due. This is a step in the right direction to have a modern code. The door however, is open for amendments.

Reagan: It seems most of us are in agreement that this bill should have

our full support. You all have rights. We are not ruling out anyone. I would like for Mr. Jardine to meet with Mr. Holmes and Mr. Gummow in the Attorney General's office and try to get these points cleared up so we can hold another meeting tomorrow afternoon.

A motion was made by Senator Durkee and seconded by Senator McDonnell to adjourn. Meeting adjourned at 4:35 PM.


Chairman

BANKING AND INSURANCE

January 20, 1959

The Committee on Banking and Insurance met at 10:45 A. M., January 20, 1959, with twelve members present.

House Bill No. 29 was discussed by the Committee. Paulson moved HB #29 do pass as presented to Committee without amendments. Kiff seconded motion. (Jardine votes no). After further discussion, Regan moved Paulson and Kiff withdraw their motions. Motion seconded by Curry and carried. Regan moved that the Committee recess until 12:30 in order to enable members of the Committee to further discuss details in the bill with the Insurance Department. Motion seconded by Schwinden and carried.

The Committee reconvened at 12:30. Paulson moved HB No. 29 do pass as is. Holecek seconded motion. The ayes have it. (See roll call for opposed names.

No further discussion the meeting adjourned.

A handwritten signature in cursive script, reading "Leonard D. Regan". The signature is written in dark ink and is positioned above the printed name "Regan, Chairman".

Regan, Chairman

*File
Sec - Insurance
Comm*

MONTANA'S PROPOSED INSURANCE CODE

Imperative need for new code. The 1957 session of the Montana Legislature, through enacting House Bill No. 82, introduced by the House Banking & Insurance Committee, directed the State Auditor and Ex Officio Commissioner of Insurance to prepare and submit to the 1959 Legislature a Bill providing a modern and adequate insurance code for Montana. In its review of the need for such a code, the 1957 Legislature pointed to the state's expanded economy, and to an accompanying expansion of the insurance business both in volume of business and the variety of forms of insurance protection; to the obsolescence and inadequacy of existing insurance laws of the state; to the increased responsibility placed upon state government for the regulation and supervision of the insurance business in the public interest, as a consequence of a 1944 U. S. Supreme Court decision making insurance subject to Federal laws and regulation as interstate commerce, and an Act of Congress passed one year later - in 1945 - granting to the states the right to continue in the supervision and regulation of the insurance business so long as the job was adequately done.

In its conclusion the 1957 Legislature declared: "It is imperative that the insurance laws of this State be studied, revised, supplemented and recodified into an adequate and consistent whole...."

Preliminary research. In response to the mandate of the Legislature, John J. Holmes, State Auditor and Ex Officio Commissioner of Insurance, undertook the task of preparing the new body of insurance laws. He first assembled an informal advisory committee, comprised of a representative cross-section of persons well acquainted with various aspects of Montana insurance operations. To handle the technical details of research and drafting of the new code he then employed, under contract, a Montana Law School graduate nationally recognized as an expert in the field of insurance legislation, and who has prepared insurance codes for various other states. By April, 1957, the research phase of the work was well under way. An exhaustive analysis was made of existing Montana insurance laws and of court decisions relating thereto; conferences were held in various parts of the state for the purpose of determining facts and proposals as to particular problems to be met in the new code; members of the staff of the State Insurance Department and of the Attorney General's office contributed information and suggestions based upon their practical experience in the administration and interpretation of existing insurance laws; persons in the insurance business throughout the state, and some buyers of insurance, advanced proposals for consideration in the preparation of the new law.

Drafting and public hearings. Actual drafting of the new code commenced in August of 1957, and continued, interspersed with further conferences, research, and discussion, until April of 1958. By that time a complete preliminary draft of the new code had been prepared and given a preliminary review within the State Insurance Department. Thereafter, in order that the provisions of the proposed code be given a thorough critical review and testing before reaching the Legislature, the preliminary draft of the code was published in full in June, 1958, and printed copies thereof made available to all interested parties. In August, 1958, Commissioner of Insurance Holmes conducted a series of public hearings on the proposed code. These hearings were held in the House chamber of the State Capitol at Helena, were given good advance publicity, and were participated in by the Commissioner and his staff, by the Attorney General, and by a good representation of Montana, United States, and foreign insurance operations, as well as members of the public.

During these public hearings, which lasted for ten days, each and every provision and part of the proposed new insurance code was exposed to criticism and discussion. In addition extensive memoranda were received by Commissioner Holmes relative to particular aspects of the code. Through information and discussion thus received it was possible to make various improvements to the draft of the code, to clarify, strengthen, and make the code a more complete and exact response to the needs of the state.

Following the public hearings and further consideration within the Insurance Department, the proposed code was, in October, 1958, completed in final form, ready for printing as a Bill for presentation to the 1959 Legislature when it convened.

New code uses organic plan. Montana's proposed new insurance code is impressive both in scope and in the substance of its provisions. Its 28 chapters comprise a Bill of 285 printed pages, making up what those who are well acquainted with it believe to be one of the most complete, adequate, and modern bodies of insurance law of any of the states. Its material is organized in accordance with an "organic" plan, under which each significant aspect and factor of the law is given separate expression and an exact, logical location in the code. This plan of organization will facilitate the further growth of the law as future need indicates, and enable the basic plan of the code to endure throughout the indefinite future. It also makes the code easy to use and to find therein the law relating to particular matters. The code uses short, simply expressed provisions, and in most particulars, except where use of actuarial and other technical terminology is unavoidable, it will be found to be readily usable and understandable by non-lawyers.

Although it is not possible, in a brief review, to tell much in detail of the substance of the proposed new insurance code, following is a very general summary of treatment given by the new code as to major subjects:

(1) General scope and definitions. (Chapter 1) Code covers the entire insurance business in the state, with broad, modern definition of "insurance", and adequate compliance and penalty requirements.

(2) Commissioner of Insurance, general powers and duties. (Chapter 2) Creates a state Insurance Department; under supervision of Commissioner of Insurance, which is an ex officio responsibility of the State Auditor, as under existing law. Gives Commissioner adequate powers for the organization of his staff, and prohibits the Commissioner or any of his staff from having any conflicting interests through financial interests in insurance companies or operations except as a policyholder; grants Commissioner general rule-making powers consistent with the statutes, and governs his orders, notices, reports; prescribes frequency and procedures for auditing of all insurance companies doing business in the state; provides complete procedures for hearings before the Commissioner, investigations, and appeals to the courts from official actions of the Commissioner; has a handy and complete schedule of fees to be charged by the Commissioner for filings, licenses, and various procedures.

(3) Capital and other general requirements of insurance companies. (Chapter 3) Materially strengthens and clarifies requirements to be met by insurance companies seeking to do business in Montana. Bars all out-of-state companies that do not do business on a "legal reserve" basis - that is, that do not maintain full "legal" reserves as to all commitments, and requires of new insurers paid-in capital funds (capital and/or surplus) in amounts ranging from \$150,000 to \$800,000, depending upon the kinds of insurance to be transacted and the age of the company. Prohibits admission of insurers affiliated, directly or indirectly, with known improper business interests. Provides for taxes on insurance premiums, to be paid by the insurers; specifies broad grounds upon which insurers found to be financially unsound or operating contrary to the public interest, may be required to discontinue business in Montana; and requires that Montana insurance risks be handled largely through licensed insurance agents resident in Montana.

(4) Definitions of "kinds" of insurance. (Chapter 4) Repealing the out-moded and more limited definitions found in existing law, the new code has broad, comprehensive definitions of the basic "kinds" of insurance, such as "life", "disability" (accident and health), "property", "casualty", "surety", "marine", and "title" insurances. These definitions encompass the entire field of insurance and determine the particular requirements of the code which are applicable to a particular insurer. They also are designed, in connection with other code provisions, to enable insurers to provide broad, economical, efficient insurance coverages which may encompass several "kinds" of insurance.

(5) Insurance accounting and reserves. (Chapter 5) The proposed new code is outstandingly complete and adequate in this area, with comprehensive provisions according to which insurers of all

kinds shall determine their assets and liabilities, and shall compute and maintain their "legal" reserves. These provisions enforce and support modern insurance accounting principles and practices for full policyholder protection.

(6) Insurance investments. (Chapter 6) Prescribes what the funds of domestic (Montana) insurance companies may be invested in, and requires reasonable diversification of the investment portfolio. Makes eligible for investment various public and corporate bonds, seasoned corporate stocks, savings and loan shares and accounts, certain securities of foreign governments, principally Canadian, real estate mortgages, and real estate in limited amounts and for limited purposes. Expressly outlawed are investments in the stock of the insurance company, or loans to the insurer's directors, officers or controlling stockholders, or, without the Commissioner's consent, in any other business owned or controlled by the insurer or its officers or directors. These provisions are designed to give the insurance companies reasonable latitude in the making of investments, but with basic limitations, requirements, and prohibitions which experience has shown to be desirable in this and other states.

(7) Insurance representatives qualifications and licensing. (Chapter 8) The new code will bring to Montana for the first time detailed provisions governing the qualifications and knowledge of basic insurance matters of persons who would be licensed as insurance agents and solicitors. In addition to expressing standards as to age, residence, reputation and trustworthiness, the new code would require that most new applicants for license as an insurance representative take and pass a written examination given by the Commissioner of Insurance. This examination would test the applicant's knowledge and understanding of the fundamentals of the kinds of insurance he proposes to handle, and his knowledge of the laws by which his activities are governed. The code provides also for the issuance of temporary licenses under certain circumstances, for the regulation and licensing of insurance vending machines such as are found at airports. For the first time, likewise, the new code provides qualifications and licensing of independent insurance adjusters.

(8) Transactions with unauthorized insurers. (Chapter 9) In addition to the Montana insurance written by insurance companies regularly licensed and "authorized" to transact insurance in the state, a growing volume of Montana insurance business is being placed with unlicensed and "unauthorized" insurers. The new code deals with three distinct aspects of transactions with "unauthorized" insurers:

(a) Jurisdiction over "mail-order" insurance. By including the provisions of the so-called "unauthorized insurers process act" which has now been adopted by most other states, Montana's new insurance code makes Montana courts available to Montana residents who buy insurance via the mails from unauthorized insurance companies and thereafter seek to litigate questions arising under the coverage. Under these provisions such a policyholder may serve his

complaint upon Montana's Commissioner of Insurance, and thereby secure legal service of process on the insurer. This law has heretofore been held constitutional by the U. S. Supreme Court.

(b) The "surplus line" market. Where a Montana resident, after efforts to do so, cannot secure desired insurance coverage from among "authorized" insurers, he may place the coverage (commonly called a "surplus line") with any insurer elsewhere willing to assume the risk, by using a Montana resident and licensed "surplus line agent". Although the existing law has some provisions relative to such surplus line transactions, the new code has clarified and supplemented these provisions wherever desirable, and provides new and important safeguards to policyholders as to the financial stability of the insurance company used and as to disclosure of the insurance coverage.

(c) Tax on independently procured coverages. In Montana, as well as in other states, important insurance coverages of property and business or industrial risks are being placed by the policyholders direct with unauthorized insurers, and not making use of surplus line or other supervised or taxed channels. In order to assure that state revenues will not suffer through the continued growth of this direct, independent insurance market, the new code provides for a premium tax to be paid by the policyholder. This tax is at the same rate as is paid on premiums collected by other insurers, and is to be deducted by the policyholder from the premium payable to the unauthorized insurer, and remitted by the policyholder to the state, within 30 days after the insurance has been placed or renewed. The tax does not apply to life or accident and health insurances. A similar tax is now being considered by other states.

(9) Monopolistic and other trade practices, and frauds. (Chapter 10) Through the new insurance code Montana will be one of the many states to enact a comprehensive body of provisions directed at monopolistic and unfair methods of competition in the insurance business. Covered are boycott, coercion, intimidation, defamation, misrepresentation, false financial statements, deceptive advertising, unfair discrimination, rebating, use of stock and other improper inducements to the purchase of insurance, interlocking management, fictitious grouping of risks to secure favorable rates, and other practices. Although some of these practices are prohibited under existing statutes, the new code greatly enlarges the scope and effectiveness of this part of the law.

(10) Rates for fire, casualty, and surety insurances. (Chapter 11) In this area the new code has adopted the existing law, as enacted several years ago, but has reorganized and clarified the existing law for better presentation and easier reference and use. The new code also adds several provisions to facilitate the so-called "rating" laws.

(11) Insurance contracts, in general. (Chapter 12) The new code will make outstanding contributions to Montana law with respect

to contracting for insurance, the general contents of such contracts, and consequences incident to such contracts in general. Although existing Montana law (sections 40-101 through 40-1005) contains numerous provisions relative to insurance contracts of various kinds, provisions enacted many years ago and apparently coming to Montana via the Civil Law of Spain and other European countries at a time when the insurance business was relatively young and unregulated, it has been found that most of these existing provisions are either obsolete, inimical to the interests of policyholders, or unnecessary or inconsistent in view of modern insurance supervision and practices. Many of these old provisions have therefore been omitted from the new code, or have in this chapter been revised, supplemented, and combined to meet modern needs.

In addition, this chapter brings new provisions to Montana governing insurance contracts by minors; requiring most insurance policy forms be filed with the Commissioner in advance of use, and be disapproved by him if found to be unlawful, ambiguous, or deceptive; governing legal "construction" of policies, in general; governing insurance "binders"; providing for payment of life insurance benefits direct to minors in certain cases, to save the time and expense of guardianship proceedings; requiring insurers to furnish proofs of loss, and providing exemption from creditors, under certain circumstances, of proceeds of life, accident and health insurance, and annuity contracts.

(12) Contents and conditions of life and disability insurance policies. In chapters 13 through 17 the new code brings many important "firsts" to Montana. Although the existing law has some of the provisions dealing with individual life insurance policies, the new code for the first time in Montana law contains standard requirements and conditions for "industrial" life policies, annuity contracts, group life insurance, individual accident and health insurance policies, group and blanket disability insurance policies, and in the rapidly expanding field of credit life and disability insurance - that is, insurance written in connection largely with small loan transactions. These chapters make use of "standard" law, as found generally throughout the nation, but with full modernization.

(13) Contents, conditions of property, casualty, surety insurance contracts. Three short chapters, 18 through 20, of the new code preserve existing law as to property, casualty, and surety insurance contracts, including also the so-called "valued policy law" as to fire insurance policies.

(14) Domestic insurers, organization and corporate procedures. (Chapter 22) The new code makes many and important new contributions to Montana law in its extensive provisions governing the formation and corporate operations of Montana stock and mutual insurance companies. Although Montana already has a well-designed body of statutes governing business corporations in general, these statutes do not touch upon some subjects of concern to insurance corporation

organization or management, or do not apply standards sufficiently strict for the protection of policyholders. The new code, through this chapter, makes up for these lacks. Covered are procedures for organization of stock and mutual insurance companies of all kinds; provisions relating to the corporate rights and liabilities of mutual insurer policyholders; provisions governing the handling of insurance company funds, management and exclusive agency contracts, maintenance of the home office, assets, and records in this state, payment of dividends, acquisition of surplus funds through loans, acquisition of necessary funds in event the company becomes impaired. Especially interesting are provision governing mergers and consolidations of insurers, either direct or through bulk reinsurance, through procedures in which the interests of policyholders are well protected.

(15) Farm mutual insurance companies. (Chapter 23) Montana has an active and growing group of domestic farm mutual insurance companies. Some of these companies operate within a single county, and others serve a wider area. There are two separate bodies of statutes governing these insurers in the present law. In the new code these statutes have been consolidated into a unified body of law, while at the same time strengthening the financial requirements of such insurers and granting power to insure city residential property of members who have substantial insurance on farm property with the same insurer. The new law provides for "county" mutuals - those insuring farm property within the confines of one county and those adjacent - and "state" mutuals, those insuring farm property located anywhere in the state. The chapter adds many new, desirable, and clarifying provisions in order to provide Montana's home-grown, grass roots farm insurance companies with an adequate and progressive body of statutes.

(16) Continuation of existing benevolent associations. (Chapter 24) In the past a number of local "benevolent" associations were formed in various Montana communities to provide limited death benefits to members on the basis of dues, assessments, or contributions. While the plans according to which these associations are formed and operate do not lend themselves well to the development of large volumes of business, they have operated with some success within their field and perform a service desired by their members. The new code continues the existing law as to the existing associations, with minor reorganization and clarification of provisions, while prohibiting the formation of new associations.

(17) Reciprocal insurance exchanges. (Chapter 25) Although there are "reciprocal insurance exchanges" licensed and operating extensively in Montana, Montana has not, up to this time, had any statutes specifically governing this newest of insurer organization types. The new code meets this need in a complete and effective manner. By the definition of "insurer", it subjects reciprocals to all the provisions of the code applicable to insurers in general, and has special provisions where distinctive treatment must be given reciprocals because of their unique plan of organization. In this chapter 25, the new code has a modern body of statutes governing

the internal affairs of such insurers, directed here, as elsewhere throughout the code, toward the protection of policyholders.

(18) Rehabilitation and liquidation of impaired insurers. Although with improved laws and supervision insurers will seldom be found in financial difficulties, when such a condition does arise it is essential that the laws provide swift, effective, and economical procedures in order that the insurer may be "rehabilitated" and restored to active operation if possible; and if rehabilitation is not possible, that the insurer's assets be made available to its creditors with smallest possible diminution as a result of liquidation procedures. Chapter 26 of the new insurance code is designed to fulfill these objectives. It is made up of provisions from the so-called "uniform insurers liquidation act", which was developed by the American Bar Association and the National Association of Insurance Commissioners during the 1930's, and which has been enacted by most other states, supplemented with additional provisions needed to provide complete and definite procedures. In this department the new Montana insurance code will be second to none in the nation.

(19) Trusted assets of alien insurers. (Chapter 27) Although Montana is the "port of entry" of one alien insurer at present (an "alien" insurer is one formed under the laws of a foreign country) which maintains a necessary deposit of assets in this state, the existing law makes no provision relative to such deposits. The new code has complete provisions governing such deposits and the terms under which to be held or released.

(20) New fraternal code. As with the insurance business in general, the past forty years have witnessed deep and significant changes in the objectives and practices of the life and disability insurance activities of fraternal benefit societies. Recognizing that existing fraternal benefit laws were no longer adequate or appropriate, the National Association of Insurance Commissioners and the National Fraternal Congress several years ago undertook an intensive study leading to the development of a new fraternal benefit society "model code" of regulatory statutes. This model code was completed and officially approved in 1955, has since been enacted by a number of states and is now under consideration by at least a half dozen other legislatures. It will in time completely replace the existing but obsolete laws governing fraternal benefit societies. This new "fraternal code" is presented in the new Montana insurance code as chapter 28.

(21) Economy and efficiency in administration. In the preparation of the new insurance code special attention has been given to removal of needless "red tape", making provisions self-explanatory as far as possible to avoid correspondence, and simplification of procedures. These factors will not only aid compliance by those governed by the code, but will also facilitate administration. Good examples of this aspect of the new code are found in licensing provisions for insurers and insurance representatives. 526

insurance companies of different types are now licensed to do business in Montana. Under existing law a new "certificate of authority" must be issued to each of these insurers each year; under the new code an original certificate of authority is issued to each insurer, and the same certificate remains in force indefinitely, as long as the insurer is entitled thereto and pays its annual fees and taxes as required. Similarly, at present the Insurance Department must issue approximately 13,172 licenses each year to the approximately 3,757 licensed insurance agents; under the new code the Insurance Department will in most cases issue but one original license to each agent, and the same license will continue in force indefinitely, as long as the agent is entitled thereto and the Department receives the annual renewal fee therefor. Through devices such as the "continuous license form" much clerical work is saved for the state and all procedures expedited.

This Summary Prepared By

THE INSURANCE DEPARTMENT
State of Montana

December - 1958

Regan

GENTLEMEN OF THE JOINT COMMITTEE:

As Commissioner of Insurance, I welcome this opportunity to appear before you in support of House Bill No. 29 which, if adopted by the Thirty-Sixth Legislative Assembly, would provide our State with a modern and adequate code of insurance law, second in quality to the insurance code of no other state.

The Bill was prepared under the supervision of the Insurance Department pursuant to the mandate of the 1957 Legislative Assembly. The revision and recodification of the insurance laws of the several states has been made necessary by reason not only of the tremendous growth and changing concepts of insurance but by reason of certain developments at the Federal level which have posed a threat to state regulation of insurance in states not having adequate state insurance laws. These factors were carefully reviewed by the 1957 Legislative Assembly with result that legislation authorizing the preparation of a new insurance code for Montana was adopted without a dissenting vote in either the House of Representatives or the Senate.

House Bill 29 has been nearly two years in development and I would like to outline briefly for you the procedure which was followed in its preparation. Because of the highly technical nature and comprehensive character of the subject matter, the members of the insurance committees of the Thirty-Fifth Legislative Assembly recommended the employment of Mr. Robert Williams, an insurance law expert of Seattle, to make the necessary studies and perform the legislative drafting function. Mr. Williams has performed ~~the~~ the task of insurance law revision in a number of states and in at least two foreign countries and has achieved national recognition for the excellence of his work in this field. No state insurance code prepared with Mr. Williams' assistance has failed of passage and it is the sincere hope of the Insurance Department of this State that the proposed Montana Insurance Code will receive like consideration. After intensive on-the-ground investigation of Montana's insurance experience under pre-existing law and a thorough-going analysis of those laws made for the purpose of

ascertaining their inadequacy and deficiencies, a preliminary draft of a proposed new insurance code was written. Copies of the preliminary draft were distributed throughout the insurance industry and to interested members of the general public for review and study. In August of this year, two weeks of public hearings on the preliminary draft were held at Helena. These hearings were conducted by the Insurance Department with Mr. Williams assisting and were attended by representatives of the Montana insurance industry and, of course, by ^arepresentative of our Attorney General. Incidentally, the Insurance Department has sought the ~~expert~~ consultation and advice of the Attorney General at all stages of the preparation of the proposed Code and it is my sincere belief that the Code has been written with the protection and welfare of the people of Montana uppermost in mind.

The hearings to which I have referred were of great interest and I wish that all of you could have attended. The comments and recommendations of interested and affected individuals and groups were received and given careful study and consideration by the Department. In many instances, conflicting interests were manifest and compromises had to be adopted. You can readily understand that the proposed Code cannot be all things to all people. Undoubtedly, some dissatisfaction with particular provisions may be expressed to you during the course of your legislative consideration of this measure. I feel very sure, however, that the proposed Code is a sound one and will prove satisfactory and effective in its overall dimensions. It would be the hope of the Department that individuals and groups who may have some objection to specific provisions would forebear at this time to facilitate legislative consideration of this measure. If, during the period from January 1, 1960, when the Bill, if adopted, becomes effective, and the next legislative session, it is found that changes are desirable, those changes can be given consideration by the Thirty-Seventh Legislative Assembly. It would be regrettable, indeed, if because of controversies involving isolated provisions, the Code in its entirety would fail of passage during this Session.

The moneys appropriated for the purpose of financing the preparation of this Bill, amounting to ~~the~~ the sum of Twenty-Five Thousand Dollars, have been carefully husbanded and I am pleased to report to you that a substantial part of that sum, amounting to more than Five Thousand Dollars, has not been expended. ~~There are no economies~~
~~have been made possible~~ We are gratified with these economies; however, you may be assured that economies were not effected at any sacrifice in quality. It is the Department's view that House Bill 29 would provide Montana with the best and most modern insurance code which would be obtainable at any price.

SENATE COMMITTEE ON
INSURANCE

The Senate Committee on Insurance met in Room 402, Tuesday, February 17, 1959 at 1:15 P. M. The following committee members were present: Chairman Hagenston, Thiessen, Groff, Durkee, Smith and McDonnell. There being a quorum present, the meeting was called to order by Chairman Hagenston.

House Bill No. 29 was reviewed by the Chairman. Chairman Hagenston related that if this Committee wished the author of the Bill, Mr. Williams, to come and meet with them, he would be available Thursday or Friday of this week. Otherwise he was going to Florida and would not be available this Session. Considerable discussion followed.

Senator McDonnell suggested that the Chairman appoint a sub-committee to meet with the House Committee and have an understanding with them regarding an effective date of this bill. Dates suggested were December 31, 1960 or January 15, 1961. The Bill would not be in force or effect until that time but would be incorporated in the laws.

Senator Durkee suggested that this bill be amended to take the "Grandfather Clause" out and pass for an effective date of December 31, 1960 or January 15, 1961.

Senator Hagenston advised that the Committee must be sure that the dove-tail tax amendment be incorporated in this bill.

Considerable discussion followed regarding the many amendments which would be submitted and what consideration the Committee might give these amendments.

The question was brought up again about whether or not Mr. Williams would be called upon to come to Helena to review this bill with Committee on Insurance. It was decided to wait until two years from now.

Chairman Hagenston asked if there were any other alternative methods of procedure to be suggested.

It was decided to have the Chairman pick two members of this Committee to take the matter up with a House Sub-Committee. The two members appointed by Chairman Hagenston were Senator Durkee and Senator McDonnell.

Senator Groff moved the meeting adjourn. Seconded by Senator McDonnell. Carried. The Senate Committee on Insurance adjourned at 1:40 P. M.


Chairman

SENATE COMMITTEE ON
INSURANCE

The Senate Committee on Insurance met in Room 319, Tuesday, February 24, 1959 at 10:15 A. M. The following committee members were present: Chairman Hagenston, Thiessen, Ruane, Groff, Durkee, and McDonnell. There being a quorum present, the meeting was called to order by Chairman Hagenston.

The Sub-committee was asked for their report. Senator Durkee advised that they met with the House Committee on Insurance and have agreed that this Committee would strip all amendments and insert the amendment that the effective date of this law would be March 1, 1961. Chairman Hagenston asked for a discussion on this report.

Senator Ruane stated he had read this bill not thoroughly by any means. He read it two times and confessed that he doesn't know what it contains due to the length. With all due respect to the sub-committee report and the Senate Committee on Insurance and the House Committee on Insurance, he does not believe that any one does understand it. Many questions will come up and many different answers. Senator Ruane stated he was very much concerned putting something on the State Books which we don't understand. He stated he would not get up on the Senate floor and talk on this bill. There are many good features to this bill and many bad features. Sincerely question the advisability of placing a law on the books when we don't understand the bill. "I can't reconcile thinking that that is sound." "I was told that Mr. Holmes could answer any questions. I went down to see him and he suggested having a cup of coffee. I feel he knows more than we do, but would'nt like to get in a question and answer discussion."

Senator Groff stated: "Frankly, I will state here and now - if I read this Bill, I wouldn't know and understand it. When the Bill was drawn up, a hearing was held and the Producers and Local Agents were in attendance. They all felt with their study of the Bill, that it was a great improvement over what we have now. They seemed to feel that the amendment suggested by the Sub-Committee was a good idea. They endorsed it wholeheartedly. If there are any flaws, there is time to clean them out. The insurance companies objected to many parts individually. They were not in favor of the entire bill. Each and every one stated they would go along with the bill in order to get it on the books. However, if amendments were inserted by other companies, they would all make amendments."

Senator Durkee stated he had lunch with Attorney Few and Mr. Few stated he would go along with the amendment as suggested by the Sub-Committee. Mr. Williams continually puts out the same type of bill. There is one introduced in Arkansas and one being drawn to be introduced in Florida at the present time.

Senator Thiessen stated he had to leave to attend another meeting, and asked to be excused.

Senator Durkee moved that the report to the Senate Committee on Insurance be adopted. Senator McDonnell seconded. Carried.

February 24, 1959

Senator Durkee moved that the Senate Committee on Insurance reject all House Amendments. Senator McDonnell seconded the motion. Senator Ruane voted no. Carried.

Senator Durkee moved to amend House Bill 29 by inserting a new section, being Section 674, reading as follows: Effective date of this act shall be March 1, 1961. McDonnell seconded the motion. Senator Ruane voted no. Carried,

Senator Durkee moved to amend the Title in last line following the word herewith by striking the period and quotation marks and inserting in lieu thereof a period and the words "PROVIDING FOR AN EFFECTIVE DATE." Seconded by Senator McDonnell. Ruane voted no. Carried.

Senator Groff moved that House Bill No. 29 be concurred in as amended. Senator McDonnell seconded the motion. Ruane voted no. Carried.

Senator Ruane stated under "Question" the following: "There are so many provisions in this bill which are not understood by anyone that I cannot reconcile to put it on our statute books. Something which is not understood should not be passed even though the effective date is two years hence."

Senator Ruane further stated he did not wish to have a minority report, however, would not talk on the bill on the Senate floor.

Senator Durkee moved the meeting be adjourned. Seconded by Senator Groff. Carried.

The Senate Committee meeting on Insurance adjourned at 10:40 A. M.



Chairman +

ments thereto, shall be filed in the office of the board and in the office of the secretary of state. Rules and regulations shall be published by the board in a convenient form and made easily available to all vessel operators.

Duty to enforce.

Section 17. It shall be the duty of the sheriffs of the various counties in state, and game wardens, or any peace officer in the State of Montana to enforce the sections of this law.

Penalties.

Section 18. **Penalty.** Violations of any section of this act shall be a misdemeanor and be punishable by fine of not less than ten dollars (\$10.00) or more than five hundred dollars (\$500.00) or by imprisonment up to thirty (30) days, or by both such fine and imprisonment.

Savings clause.

Section 19. **Savings clause.** If any competent court shall find any section or sections of this act to be unconstitutional or otherwise invalid, such finding shall not affect the validity of all remaining sections of this act which can be given effect.

Repealing clause.

Section 20. Sections 94-35-266, 94-35-267 and 94-35-268 of the Revised Codes of Montana, 1947, and any acts or parts of acts in conflict herewith are hereby repealed.

Effective immediately.

Section 21. This act shall be effective from and after the date of its passage and approval.

Approved March 18, 1959.

CHAPTER 286

An Act to Provide a Comprehensive Revision, Consolidation and Classification of the Laws of the State of Montana Relating to Insurance and to the Insurance Business; Regulating the Incorporation, Formation, and Affairs of Domestic Insurance Companies, Societies, and Associations, and the Admission of Foreign and Alien Insurance Companies, Societies, and Associations; Providing for Their Rights, Powers and Immunities, and to Prescribe the Conditions on Which Insurance Companies, Societies, and Associations Organized, Existing, or Authorized Under This Act May Exercise Their Powers; Providing for the Rights, Powers, and Immunities and to Prescribe the Conditions on Which Other Persons, Firms, Corporations, and Associations Engaged in or Affected by an Insurance Business May Exercise Their Powers; Providing for Service of Process on Unauthorized Insurers and the Conditions for Defense of Actions Brought Against Them in This State; Providing for Certain Powers, Rights, Obligations, Immunities, and Consequences as to Insurees and Other Persons Relative to Insurance Contracts and Annuity Contracts and Matters Arising From Such Contracts; Providing for the Imposition of Licenses, Fees, and Taxes, and for the Disposition Thereof; Providing for the Departmental Supervision and Regulation of the Insurance Business Within or Relative to This State; Providing Penalties for the Violation of This Act; Providing for an Effective Date of This Act; Repealing the Following Sections of the Revised Codes of Montana, 1947: Section 25-101; Sections 40-101 through 40-105; Sections 40-201 through 40-218; Sections 40-301 through 40-323; Sections 40-401 through 40-415; Sections 40-501 through 40-517; Section 40-601; through 40-609; Sections 40-701 Through 40-706; Section 40-801; Sections 40-901 Through 40-905; Sections 40-1001 Through 40-1005; Sections 40-1101 Through 40-1118; Section 40-1204; Section 40-1301; Section 40-1302 as Amended by Section 1, Chapter 224, Laws of Montana, 1957; Sections 40-1303 Through 40-1333; Sections 40-1401 Through 40-1441; Sections 40-1501 Through 40-1517; Sections 40-1601 Through 40-1625; Sections 40-1701, 40-1702; Sections

40-1704 Through 40-1722; Section 40-1726; Sections 40-1801 Through 40-1820; Sections 40-1901 Through 40-1946; Sections 40-2001 Through 40-2012; Sections 40-2101 Through 40-2138; Sections 40-2201 Through 40-2212; Sections 40-2301 Through 40-2310; Sections 40-2401 Through 40-2412; Section 40-2413 as Amended by Section 1, Chapter 108, Laws of Montana, 1955; Sections 40-2414 Through 40-2416; and Sections 40-2501 Through 40-2513; Repealing All Acts and Parts of Acts in Conflict Herewith.

Be it enacted by the Legislative Assembly of the State of Montana:

CHAPTER 1—SCOPE OF CODE

Title.	Section 1. Short title. This act constitutes the Montana Insurance Code.
"Insurance" defined.	Section 2. "Insurance" defined. "Insurance" is a contract whereby one undertakes to indemnify another or pay or provide a specified or determinable amount or benefit upon determinable contingencies.
"Insurer" defined.	Section 3. "Insurer" defined. "Insurer" includes every person engaged as indemnitor, surety, or contractor in the business of entering into contracts of insurance.
"Person" defined.	Section 4. "Person" defined. "Person" includes an individual, insurer, company, association, organization, Lloyds, society, reciprocal or interinsurance exchange, partnership, syndicate, business trust, corporation, and any other legal entity.
Definitions.	Section 5. "Commissioner," "Department" defined. Unless context requires otherwise:
"Commissioner."	(1) "Commissioner" means commissioner of insurance of the State of Montana.
"Department."	(2) "Department" means the department of insurance of the State of Montana.
	Section 6. "Domestic," "Foreign," "Alien" Insurer and "State" Defined. (1) A "domestic" insurer is one formed under the laws of this state.

- (2) A "foreign" insurer is one formed under the laws of any jurisdiction other than this state. "Foreign" insurer.
- (3) An "alien" insurer is one formed under the laws of any country other than the United States of America, its states, district, territories, and commonwealths. "Alien" insurer.
- (4) Except where distinguished by context, "foreign" insurer includes also an "alien" insurer.
- (5) When used as to jurisdiction "state" means a state, District of Columbia, territory, commonwealth, or possession of the United States of America. "State."

Section 7. **"Authorized," "Unauthorized" Insurer Defined.** (1) An "authorized" insurer is one duly authorized, by subsisting certificate of authority issued by the commissioner, to transact insurance in this state. "Authorized" insurer.

(2) An "unauthorized" insurer is one not so authorized. "Unauthorized" insurer.

Section 8. **"Transacting" Insurance.** "Transact" with respect to insurance includes any of the following: "Transact."

- (1) Solicitation and inducement.
- (2) Preliminary negotiations.
- (3) Effectuation of a contract of insurance.
- (4) Transaction of matters subsequent to effectuation of the contract of insurance and arising out of it.

Section 9. **Compliance required.** No person shall transact a business of insurance in Montana, or relative to a subject resident, located or to be performed in Montana, without complying with the applicable provisions of this code. Compliance required.

Section 10. **Application of code as to particular types of insurers.** No provision of this code shall apply with respect to: Exempt insurers.

- (1) Domestic farm mutual insurers (as identified in chapter 23), except as stated in chapter 23 (farm mutual insurers);
- (2) Domestic benevolent associations (as identified

in chapter 24), except as stated in chapter 24 (benevolent associations); and

(3) Fraternal benefit societies, except as stated in chapter 28 (fraternal benefit societies).

Exempt
organizations
and activities.

Section 11. **Exempted organizations, activities.** This code shall not apply to health service corporations, to the extent that the existence and operations of such corporations are authorized by section 15-1401 and related sections of the Revised Codes of Montana, 1947.

Expiration
of existing
certificates
of authority
and licenses.

Section 12. **Existing certificates of authority and licenses.** The expiration dates of certificates of authority and licenses in force immediately prior to the effective date of this code, and lawfully existing under any law repealed by this act, are extended as follows:

(1) Licenses or certificates of authority of insurers shall expire at midnight on May 31 next following such effective date.

(2) Licenses of agents and solicitors shall expire at midnight, May 31 next following such effective date.

Such certificates of authority and licenses, upon first renewal made under this code, shall be replaced by certificates of authority or licenses in form as provided by this code, and shall thereafter be subject to continuation, suspension, revocation or termination as though originally issued under this code.

Use of existing
forms and filings.

Section 13. **Existing forms and filings.** Every form of insurance document and every rate or other filing lawfully in use immediately prior to the effective date of this code may continue to be so used or be effective until the commissioner otherwise prescribes pursuant to this code; except, that before expiration of one year from and after such effective date neither this code nor the commissioner shall prohibit the use of any such document, rate, or filing because of any power, prohibition, or requirement contained in this code which did not exist under laws in force immediately prior to such effective date.

Existing
domestic
insurers.

Section 14. **Existing domestic insurers.** Any domestic insurer having a subsisting certificate of authority to transact insurance in this state immediately prior to

the effective date of this code, whose law of incorporation or law under which formed is repealed by this act, shall continue to have a corporate existence (if a corporation) or existence (if other than a corporation) as though incorporated or formed under like provisions of this code; but all amendments to articles of incorporation shall be made hereafter in compliance with the applicable provisions of this code, and all such insurers shall be otherwise governed by the provisions of this code.

Section 15. **General saving clause.** This act shall not impair or affect any act done, offense committed or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment incurred prior to the time this act takes effect, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted, as fully and to the same extent as if this act had not been passed.

Saving clause.

Section 16. **Particular provisions prevail.** Provisions of this code relative to a particular kind of insurance or a particular type of insurer or to a particular matter shall prevail over provisions relating to insurance in general or insurers in general or to such matter in general.

Particular
provisions
prevail.

Section 17. **General penalty.** Each violation of any provision of this code, with respect to which violation a greater penalty is not provided by other applicable laws of this state, shall, in addition to any administrative penalty otherwise applicable thereto, upon conviction in a court of competent jurisdiction of this state be punishable by a fine of not less than fifty dollars (\$50.00) nor more than one thousand dollars (\$1,000), or by imprisonment in the county jail for not less than thirty (30) days nor more than ninety (90) days, or by both such fine and imprisonment.

Penalty.

Section 18. **Severability.** If any section, subsection, subdivision, sentence, word, or provision of this act shall be determined by a court of competent jurisdiction to be unconstitutional or inoperative, such determination shall not effect the remaining portions of this act.

Severability.

Section 19. **Effective date.** This act shall become effective on January 1, 1961.

Effective
January 1, 1961.

CHAPTER 2—THE COMMISSIONER OF INSURANCE

State Auditor
ex officio
commissioner.

Section 20. **Commissioner of insurance designated.** The state auditor shall ex officio be the commissioner of insurance of this state.

Insurance
department
created.

Section 21. **Insurance department.** (1) There is created an insurance department of this state, which shall be located in or convenient to the office occupied by the state auditor.

Control and
supervision of
commissioner.

(2) The insurance department shall be under the control and supervision of the commissioner.

Appropriated
fund.

(3) Funds adequate for the maintenance and operation of the insurance department shall be expressly appropriated by the legislative assembly, and shall be used solely for the purposes for which so appropriated.

Commissioner's
seal.

Section 22. **Commissioner's seal.** (1) The commissioner shall have a seal of office consisting of the same symbolic design within the inner circle as the great seal of the State of Montana, encircled by the words "commissioner of insurance, State of Montana."

(2) All certificates and licenses issued by the commissioner shall bear his seal, except that the commissioner may, in his discretion, omit the seal as to licenses.

Authority
to appoint
chief deputy.

Section 23. **Deputies and assistants.** (1) The commissioner shall appoint a chief deputy insurance commissioner, who shall be in charge of the insurance department, under the direction and control of the commissioner.

Additional
deputies.

(2) The commissioner may appoint additional deputy insurance commissioners for such purposes as he may designate.

Actuary.

(3) The commissioner may employ a competent insurance actuary, to perform actuarial duties, if any, of the department, to take charge of or assist in the examination of insurers, and to perform other duties assigned to him.

Examiners.

(4) The commissioner may appoint or employ such examiners to conduct or assist in examinations of insurers and others provided for under the code, as may be

competent, because of experience or special education or training, to fulfill the responsibilities of an insurance examiner.

Field
investigator.

(5) The commissioner shall appoint and employ a field investigator whose primary duty it shall be, as directed by the commissioner, to make investigations in this state of violations or claimed violations of this code.

Chief Clerk
and assistants.

(6) The commissioner may appoint a chief clerk for the insurance department, and employ such other assistants and clerks as may be necessary to assist him properly to discharge the duties imposed upon him under this code.

Termination of
employment.

(7) The commissioner may at any time terminate the appointment, designation, or employment of any such deputy, actuary, chief clerk, or other employee.

Contract
for services.

(8) The commissioner may from time to time contract for and procure, on a fee or part time basis, or both, such actuarial, technical or other professional services as he may require for the discharge of his duties.

Compensation.

(9) The compensation of all such personnel so appointed, or employed, or contracted for by him shall be as fixed by the commissioner, but in the aggregate shall not exceed current funds appropriated by the legislative assembly to the insurance department or otherwise currently available for the purpose.

Prohibited
interests.

Section 24. **Prohibited interests, rewards.** (1) The commissioner or any deputy, examiner, assistant or employee of the commissioner shall not be financially interested, directly or indirectly, in any insurer, insurance agency, or insurance transaction except as a policyholder or claimant under a policy; except, that as to such matters wherein a conflict of interests does not exist on the part of any such individual, the commissioner may employ or retain from time to time insurance actuaries, attorneys, or other technicians who are independently practicing their professions even though similarly employed or retained by insurers or others.

Prohibited
awards.

(2) The commissioner or any deputy, examiner, or employee of the commissioner, shall not be given nor receive any fee, compensation, loan, gift, or other thing

of value in addition to the compensation and expense allowance provided by law, for any service rendered or to be rendered as such commissioner, deputy, examiner, or employee or in connection therewith.

Delegation
of authority.

Section 25. **Delegation of authority.** (1) The commissioner may delegate to any deputy, assistant, examiner or employee of his department, the exercise or discharge in the commissioner's name of any power, duty, or function, whether ministerial or discretionary, vested by this code in the commissioner.

Responsibility.

(2) The commissioner shall be responsible for the official acts of his deputy, assistant, examiner or employee acting in the commissioner's name and by his authority.

Records.

Section 26. **Records.** The commissioner shall enter in permanent form records of his official transactions, examinations, investigations, and proceedings, and keep such records in his office. Such records and insurance filings in his office shall be open to public inspection, except as otherwise provided in this code with respect to particular records or filings.

Certificates
as evidence.

Section 27. **Certificates as evidence.** (1) Copies of records or documents in his office certified to by the commissioner shall be received in evidence in all courts as if they were the originals.

(2) The commissioner shall furnish, when required, his certificate as to the authority of any person to transact insurance, and such certificate shall be evidence of the facts set forth therein.

Powers and duties
of commissioner.

Section 28. **General powers, duties.** (1) The commissioner shall enforce the provisions of this code, and shall execute the duties imposed upon him by this code.

(2) The commissioner shall have the powers and authority expressly conferred upon him by or reasonably implied from the provisions of this code.

(3) The commissioner may conduct such examinations and investigations of insurance matters, in addition to examinations and investigations expressly authorized, as he may deem proper to determine whether any person has violated any provision of this code or to secure information useful in the lawful administration of any

such provision. The cost of such additional examinations and investigations shall be borne by the state.

(4) The commissioner shall have such additional powers and duties as may be provided by other laws of this state.

Power
to regulate.

Section 29. **Rules and regulations.** (1) The commissioner may make reasonable rules and regulations necessary for or as an aid to effectuation of any provision of this code. No such rule or regulation shall extend, modify, or conflict with any law of this state or the reasonable implications thereof. Any such rule or regulation affecting persons or matters other than the personnel or the internal affairs of the commissioner's office shall be made or amended only after a hearing thereon of which notice was given as required by section 41. If reasonably possible the commissioner shall set forth the proposed rule or regulation or amendment in or with the notice of hearing. No such rule or regulation or amendment as to which a hearing is required shall be effective until it has been on file as a public record in the commissioner's office for at least ten (10) days.

Hearing.

(2) In addition to any other penalty provided, willful violation of any such rule or regulation shall subject the violator to such administrative penalties as may be applicable under this code as for violation of the provision as to which such rule or regulation relates.

Administrative
penalties.

Section 30. **Orders, notices.** (1) Orders and notices of the commissioner shall not be effective unless in writing signed by him or by his authority.

Requirements
of orders
and notices.

(2) Every such order shall state its effective date and shall concisely state:

(a) Its intent or purpose.

(b) The grounds on which based.

(c) The provisions of this code pursuant to which action is so taken or proposed to be taken; but failure to so designate a particular provision shall not deprive the commissioner of the right to rely thereon.

(3) Except as may be provided in this code respecting particular procedures, an order or notice may be given

by delivery to the person to be ordered or notified or by mailing it, postage prepaid, addressed to him at his principal place of business as last of record in the commissioner's office. Such order or notice shall be deemed to have been given when so mailed.

Annual report.

Section 31. **Commissioner's annual report.** As early in the calendar year as reasonably possible the commissioner annually shall prepare and deliver a report to the legislative assembly and the governor, showing, with respect to the preceding calendar year:

(1) List of the authorized insurers transacting insurance in Montana, with such summary of their financial statement as he deems appropriate;

(2) Names of all insurers whose business was closed during the year, the cause thereof, and amount of assets and liabilities as ascertainable;

(3) Names of insurers against which delinquency or similar proceedings were instituted, and a concise statement of the facts with respect to each such proceeding and the status thereof;

(4) A statement in regard to examination of rating organizations, advisory organizations, joint underwriters, and joint reinsurers as required by section 251.

(5) The receipts and expenses of the insurance department for the year.

(6) Recommendations of the commissioner as to amendments or supplementation of laws affecting insurance, as to matters affecting the office of commissioner, and

(7) Such other pertinent information and matters as the commissioner deems proper.

Procedure for examination of insurers.

Section 32. **Examination of insurers.** (1) The commissioner shall examine the affairs, transactions, accounts, records, and assets of each authorized insurer as often as he deems advisable. He shall so examine each domestic insurer not less frequently than every three (3) years. Examination of an alien insurer may be limited to its insurance transactions and affairs in the United States. Examination of a reciprocal insurer may also include

examination of its attorney-in-fact insofar as the transactions of the attorney in fact relate to the insurer.

(2) The commissioner shall in like manner examine each insurer applying for an initial certificate of authority to do business in this state.

(3) In lieu of making his own examination, the commissioner may, in his discretion, accept a full report of the last recent examination of a foreign or alien insurer, certified to by the insurance supervisory official of another state, territory, commonwealth, or district of the United States.

Section 33. **Examination of agents, managers, promoters.** For the purpose of ascertaining compliance with this code, the commissioner may as often as he deems advisable examine the accounts, records, documents, and transactions, pertaining to or affecting its insurance affairs or proposed insurance affairs, of:

Examination of agents, managers, promoters.

(1) Any insurance agent, solicitor, surplus line agent, general agent, or adjuster.

(2) Any person having a contract under which he enjoys in fact the exclusive or dominant right to manage or control an insurer.

(3) Any person holding the shares of voting stock or policyholder proxies of a domestic insurer, for the purpose of controlling the management thereof, as voting trustee or otherwise.

(4) Any person engaged in or proposing to be engaged in or assisting in the promotion or formation of a domestic insurer or insurance holding corporation, or corporation to finance a domestic insurer or the production of its business.

Section 34. **Conduct of examination; records; correction of accounts; appraisals.** (1) The commissioner shall conduct any such examination at the home office (if a domestic or foreign insurer) or United States branch office (if an alien insurer) of the insurer, or in any of its branch or agency offices; or with respect to persons other than insurers, at the office or other place of business of such person or at any place or places where his records are kept.

Conduct of examinations.

Duty to make records available.

(2) Every person being examined, its officers, employees, agents, and representatives shall produce and make freely available to the commissioner or his examiners the accounts, records, documents, files, information, assets, and matters in his possession or control relating to the subject of the examination; and shall otherwise facilitate and aid such examination as far as reasonably possible.

Authority to employ experts.

(3) If the commissioner finds accounts to be inadequate, or inadequately kept or posted, he may employ experts to rewrite, post, or balance them at the expense of the person being examined if such person has failed to complete or correct such accounting after the commissioner has given him notice and a reasonable opportunity to do so.

Authority to employ appraisers.

(4) If the commissioner deems it necessary to value any real estate involved in any such examination, he may make written request of the person being examined to appoint one or more competent appraisers approved by the commissioner, for the purpose of appraising such property. If no such appointment is made within ten (10) days after such request was delivered to such person, the commissioner may appoint the appraiser or appraisers. Any such appraisal shall be made promptly, and a copy of the report thereof shall be furnished to the commissioner. The reasonable expense of the appraisal shall be borne by the person being examined.

Examination reports.

Section 35. **Examination reports.** (1) The commissioner or his examiner shall make a full and true report of each examination, verified by his oath.

Report shall comprise facts.

(2) The report shall comprise only facts appearing from the books, papers, records, or documents of the person being examined, or ascertained from the testimony, under oath, of individuals concerning its affairs, and conclusions and recommendations as warranted by such facts.

Copy to person examined—hearing.

(3) The commissioner shall furnish a copy of the proposed report to the person examined not less than twenty (20) days prior to filing the same in his office. If such person so requests in writing within such twenty-day period, the commissioner shall grant a hearing with

respect to the report, and shall not so file the report until after the hearing and after such modifications, if any, have been made therein as the commissioner deems proper.

Presumptive evidence.

(4) The report when so verified and filed shall be presumptive evidence, in any action or proceeding brought by the commissioner against the person examined, or against its officers or agents, of the facts stated therein. The commissioner and his examiners may at any time testify and offer other proper evidence as to information secured during the course of an examination, whether or not a written report of the examination has at that time been either made, served, or filed in the commissioner's office.

Withholding.

(5) The commissioner may withhold from public inspection any examination or investigation report for so long as he deems such withholding to be necessary for the protection of the person examined against unwarranted injury or to be in the public interest.

Publication.

(6) If he deems such to be in the public interest the commissioner may publish any such examination report or a summary thereof in one or more newspapers in the state.

Examination expenses.

Section 36. **Examination expense.** (1) Each person so examined, other than as to examinations pursuant to section 33, shall pay the actual travel expenses, a reasonable living expense allowance, and a per diem as compensation of examiners, as necessarily incurred on account of the examination, all at reasonable rates customary therefor and as established or adopted by the commissioner, upon presentation of a detailed account of such charges and expenses by the commissioner or pursuant to his written authorization. Such an account may be so presented periodically during the course of the examination or at the termination of the examination, as the commissioner deems proper. No person shall pay and no examiner shall accept any additional emolument on account of any such examination.

Creation of insurance department examinations revolving fund—purpose.

(2) There is created in the state treasury a special fund to be known as the "insurance department examinations revolving fund." The commissioner shall pay to

the state treasurer to the credit of this special fund all monies received pursuant to subsection (1) above. This fund shall be used only for or toward payment of travel, living allowance and other expenses incurred by the commissioner and his examiners in the making of examinations (other than examinations of applicants for license as insurance agents or other representatives) under this code, and the compensation of such examiners, upon such bases as the commissioner may fix for the purposes of this subsection. In lieu of deposit thereof in such fund, the commissioner may give written authorization for payment, by the person examined, of such travel expenses and living allowance direct to the examiner. Any other law of this state to the contrary notwithstanding, the travel expense and living allowance of examiners shall be as fixed by the commissioner pursuant to this subsection. Any sums remaining in this special fund at the end of any fiscal period shall be carried forward and remain in the fund, and are hereby continuously appropriated for use as provided in this subsection.

Lien on failure to pay.

(3) If any such person fails to pay the charges and expenses, as referred to in subsection (1) above, they shall be paid out of the funds of the commissioner in the same manner as other disbursements of such funds. The amount so paid shall be a first lien upon all of the assets and property in this state of such person, and may be recovered by suit by the attorney general on behalf of the State of Montana, and restored to the appropriate fund.

Powers of subpoena.

Section 37. **Witnesses and evidence.** (1) With respect to the subject of any examination, investigation, or hearing being conducted by him the commissioner or his examiner, if general written authority therefor has been given the examiner by the commissioner, may subpoena witnesses and administer oaths or affirmations and examine any individual under oath, and may require and compel the production of records, books, papers, contracts, and other documents by attachments, if necessary. If in connection with any examination of an insurer the commissioner desires to examine any officer, director or manager thereof who is then outside this state, the commissioner is authorized to conduct and to

enforce by all appropriate and available means any such examination under oath in any other state or territory of the United States in which such officer, director or manager may then presently be, to the full extent permitted by the laws of such other state or territory, this special authorization considered.

(2) Witness fees and mileage, if claimed, shall be allowed the same as for testimony in a district court. Witness fees, mileage, and the actual expenses necessarily incurred in securing attendance of witnesses and their testimony shall be itemized, and shall be paid by the person being examined if such person is found to have been in violation of the law as to the matter with respect to which such witness was subpoenaed, or by the person, if other than the commissioner, at whose request the hearing is held.

Allowance for witnesses.

(3) Subpoenas of witnesses shall be served in the same manner as if issued from a district court. If any individual fails to obey a subpoena lawfully served, the commissioner shall forthwith report such disobedience, together with a copy of the subpoena and proof of service thereof, to the district court for the county in which the individual was required to appear, and such court shall forthwith cause such individual to be produced and shall impose penalties as though he had disobeyed a subpoena issued out of such court.

Service.

(4) Any person wilfully testifying falsely under oath as to any matter material to any such examination, investigation, or hearing, shall upon conviction thereof be guilty of perjury and punished accordingly.

Penalty for false testimony.

(5) Any person wilfully failing to attend, answer or produce records, documents or other evidence requested by the commissioner, or who wilfully fails to give the commissioner full and truthful information and answer in writing to any material written inquiry of the commissioner, relative to the subject of any such examination, investigation, or hearing, or wilfully fails to appear and testify under oath before the commissioner, shall upon conviction thereof, in addition to or in lieu of any other penalty or penalties applicable, be deemed guilty of a misdemeanor.

Penalty for failure to testify.

Testimony
compelled.

Section 38. **Testimony compelled; immunity from prosecution.** No person shall be excused from attending and testifying or producing any evidence upon any examination, investigation, or hearing conducted by or under authority of the commissioner, on the ground that his testimony or the evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. No person shall be prosecuted or punished in any criminal action or proceeding for or on account of any act, transaction, matter or thing concerning which he is so compelled to produce evidence or to testify under oath, except for perjury committed in such testimony.

Immunity from
prosecution
except for
perjury.

Hearings.

Section 39. **Hearings.** (1) The commissioner may hold hearings for any purpose within the scope of this code deemed by him to be necessary.

(2) The commissioner shall hold a hearing if required by any provision, or upon written demand therefor by a person aggrieved by any act, threatened act or failure of the commissioner to act, or by any report, rule, regulation or order of the commissioner (other than an order for the holding of a hearing, or an order on hearing or pursuant thereto). Any such demand shall specify the grounds to be relied upon as a basis for the relief to be demanded at the hearing, and unless postponed by mutual consent, such hearing shall be held within thirty (30) days after receipt by the commissioner of demand therefor.

(3) If within such thirty (30) day period the commissioner does not either (a) grant the hearing, or (b) issue his order refusing the hearing, as to such previous report, rule, regulation, or order as to which such person so claims to be aggrieved, then the hearing shall thereby be deemed to have been refused.

Stay of action.

Section 40. **Stay of action.** (1) Such a demand for a hearing received by the commissioner prior to the effective date of any order issued by him or within ten (10) days after such order is delivered, shall stay the effectiveness of such order pending the hearing and an order made thereon, except as to action taken or proposed (a) under an order on hearing, or (b) under an order pursuant and supplemental to an order on hearing,

or (c) under an order based upon impairment of assets or unsound financial condition of an insurer.

(2) If an automatic stay is not provided for and the commissioner after written request therefor fails to grant a stay, the person aggrieved may apply to the district court for Lewis and Clark county for a stay of the commissioner's proposed action.

Section 41. **Notice of hearing.** Not less than ten (10) days in advance the commissioner shall give notice of the time and place of the hearing, stating the matters to be considered thereat. If the persons to be given notice are not specified in the provision pursuant to which the hearing is held, the commissioner shall give such notice to all persons whose pecuniary interests are to be directly and immediately affected by such hearing.

Notice
of hearing.

Section 42. **Hearing procedure.** (1) Hearings may be closed to the public at the commissioner's discretion, except that a hearing held with respect to a filing made under chapter 11 (rates and rating organizations) prior to the effective date of such filing shall be closed to the public unless otherwise requested by the party that made such filing; in all other cases a hearing shall be open to the public if so requested in writing by any party to the hearing.

Hearing
procedure.

(2) The commissioner shall allow any party to the hearing to appear in person and by counsel, to be present during the giving of all evidence, to have a reasonable opportunity to inspect all documentary evidence and to examine witnesses, to present evidence in support of his interest, and to have subpoenas issued by the commissioner to compel attendance of witnesses and production of evidence in his behalf.

Rights of parties.

(3) The commissioner shall permit to become a party to the hearing by intervention, if timely, any person who was not an original party thereto and whose pecuniary interests are to be directly and immediately affected by the commissioner's order made upon the hearing.

Intervention.

(4) Formal rules of pleading or evidence need not be observed at any hearing.

Formal rules
not required.

Stenographic
records and
transcripts.

(5) Upon written request seasonably made by a party to the hearing and at such person's expense, the commissioner shall cause a full stenographic record of the proceedings to be made by a competent reporter. If transcribed a copy of such stenographic record shall be furnished to the commissioner, without cost to the commissioner or the state, and shall be a part of the commissioner's record of the hearing. If so transcribed a copy of such stenographic record shall be furnished to any other party to such hearing at the request and expense of such other party. If no stenographic record is made or transcribed, the commissioner shall prepare an adequate record of the evidence and of the proceedings.

Rehearing.

(6) Upon written request of a party to a hearing filed with the commissioner within thirty (30) days after any order made pursuant to a hearing has been mailed or delivered to the persons entitled to receive the same, the commissioner may, in his discretion, grant a rehearing or reargument of the matters involved in such hearing, and notice of such rehearing or reargument shall be given as provided in section 41.

Order on hearing.

Section 43. Order on hearing. (1) In conducting any such hearing the commissioner shall sit in a quasi judicial capacity. Within thirty (30) days after termination of the hearing or of any rehearing thereof or reargument thereon, he shall make his order on hearing, covering matters involved in such hearing and in any rehearing or reargument thereof, and shall give a copy of such order to the same persons given notice of the hearing.

(2) The order shall contain a concise statement of the facts as found by the commissioner, and of his conclusions therefrom, and the matters required by section 30.

(3) The order may affirm, modify, or nullify action theretofore taken or may constitute the taking of new action within the scope of the notice of hearing.

Appeals to
district court.

Section 44. Appeals from the commissioner. (1) An appeal from the commissioner shall be taken only from an order on hearing or with respect to a matter as to which the commissioner has refused a hearing. Any person who was a party to such hearing, or whose pecuniary interests are directly and immediately affected

by any such order or refusal and who is aggrieved thereby may, within thirty (30) days after (a) the order has been mailed or delivered to the persons entitled to receive the same, or (b) the commissioner's order denying rehearing or reargument has been so mailed or delivered, or (c) the commissioner's refusal to grant a hearing, appeal from such order on hearing or such refusal of a hearing. The appeal shall be taken to the district court of Lewis and Clark county, by filing written notice of appeal in such court and by filing a copy of such notice with the commissioner; except, that in appeals from the suspension or revocation of the certificate of authority of a domestic insurer or of the license of an agent, solicitor, or surplus line agent, the person taking the appeal may, at his option, in lieu of the district court of Lewis and Clark county, take the appeal to the district court of the county of Montana in which the insurer has its principal place of business or the licensee resides.

Procedure
for appeal.

(2) Upon filing of the notice of appeal therein the court shall have full jurisdiction, and shall determine whether such filing shall operate as a stay of the order or action appealed from, except that in the following instances the filing of the notice of appeal shall automatically stay the order appealed from pending the judgment of the district court on the appeal:

Jurisdiction.

Stay of order.

(a) Appeal from suspension or revocation of the license of an agent, solicitor or surplus line agent.

(b) Appeal from suspension or revocation of the certificate of authority of an insurer.

(3) Within twenty (20) days after filing of the copy of the notice of appeal in his office, the commissioner shall make and return to the court in which the appeal is pending a copy of his order appealed from and a full and complete transcript, duly certified by the commissioner, of his record of the hearing upon which the order was issued, together with all exhibits and documentary evidence introduced thereat. If the appeal is from an action of the commissioner with respect to which a hearing was refused, the commissioner shall within such twenty (20) day period make and return to the court a full and complete transcript, duly certified by him, of all

Duty to furnish
transcript.

documents on file in his office directly relating to the matter as to which such appeal is taken.

Trial de novo.

(4) Upon receipt of such transcripts and evidence the court shall hear the matter de novo as soon as reasonably possible thereafter. Upon the hearing of the appeal the court shall consider the evidence contained in the transcript, exhibits, and documents therein filed by the commissioner, together with such additional proper evidence as may be offered by any party to the appeal.

(5) After hearing the appeal the court may affirm, modify or reverse the order or action of the commissioner in whole or in part, or remand the action to the commissioner for further proceedings in accordance with the court's direction.

Costs

(6) Costs shall be awarded as in civil actions.

Appeal to
supreme court.

(7) Appeal may be taken to the supreme court from the judgment of the district court as in other civil cases to which the state is a party. A stay of the effectiveness of any such judgment may be made only by order of the supreme court upon the giving of such security as that court deems proper.

Undertaking.

(8) This section shall not apply to appeals as to matters covered by chapter 11 of this code (rates and rating organizations), and for which appeal is provided for under section 257.

Schedule of fees
and licenses.

Section 45. **Fees and licenses.** (1) The commissioner shall collect in advance, and the persons so served shall so pay to the commissioner, the following fees and licenses:

(a) Certificates of authority.

(i) Application for original certificate of authority: For filing applications for certificate of authority, articles of incorporation (except as provided in subsection (b), below) and other charter documents, bylaws, financial statement, examination report, power of attorney to the commissioner, and all other documents and filings required in connection with such application, and for issuance of an original certificate of authority, if issued:

Domestic insurers	\$ 30.00
Foreign insurers	300.00
(ii) Annual continuation of certificate of authority	25.00
(iii) Reinstatement of certificate of authority	25.00
(b) Articles of incorporation:	
(i) Filing original articles of incorporation of domestic insurer, exclusive of fees required to be paid by the corporation to the secretary of state	20.00
(ii) Filing amendment of articles of incorporation, domestic and foreign insurers, exclusive of fees required to be paid to the secretary of state by a domestic corporation	10.00
(c) Filing bylaws or amendment thereto, where required	5.00
(d) Filing annual statement of insurer, other than as part of application for original certificate of authority	25.00
(e) Agent's license, property, casualty, surety, title insurance agents, and including disability insurance without additional license or fee when written by property, casualty, or surety insurer otherwise represented by the agent:	
(i) Application for original license, and including issuance of license, if issued	10.00
(ii) Appointment of agent, each insurer	5.00
(iii) Annual renewal or appointment of agent, each insurer	5.00
(iv) Temporary license	10.00
(f) Solicitor's license:	
(i) Application for original license, including issuance of license, if issued	5.00
(ii) Annual continuation of license	5.00
(g) Agent's license, life, disability insurance:	
(i) Application for original license, each insurer	5.00
(ii) Annual continuation or renewal of license, each insurer	5.00
(iii) Temporary license, each insurer	5.00
(h) Examination for license as agent or solicitor, each examination	10.00
(i) Surplus line agent's license:	

(i) Application for original license and for issuance of license, if issued.....	25.00
(ii) Annual renewal or continuation of license	25.00
(j) Adjuster's license:	
(i) Application for original license and for issuance of license, if issued	10.00
(ii) Annual continuation or renewal of license	10.00
(k) Insurance vending machine license, each machine, each year	10.00
(l) Commissioner's certificate under seal (except when on certificates of authority or licenses)	1.00
(m) Copies of documents on file in the commissioner's office, per page	.50

(2) The commissioner shall promptly deposit with the state treasurer to the credit of the general fund of this state all fees and licenses received by him under this section.

(3) The fees provided for in this section shall be in lieu of all fees heretofore payable with respect to insurance or insurers under section 25-101, Revised Codes of Montana, 1947.

CHAPTER 3 —

AUTHORIZATION OF INSURERS AND GENERAL REQUIREMENTS

Section 46. **Certificate of authority required; in general.** (1) No person shall act as an insurer and no insurer shall transact insurance in this state except as authorized by a subsisting certificate of authority issued to it by the commissioner, except as to such transactions as are expressly otherwise provided for in this code.

(2) No insurer shall have or maintain in Montana any office, representative, or other facilities for the solicitation or servicing of any kind of insurance in any other state unless it is then authorized to transact the same kind of insurance in this state.

Section 47. **Exceptions, certificate of authority requirement.** A certificate of authority shall not be required of an insurer, not otherwise authorized in this state, as to the following transactions:

(1) Transactions relative to its policies lawfully

written in Montana, or liquidation of assets and liabilities of the insurer (other than collection of new premiums), all as resulting from its former authorized operations in Montana.

(2) Transactions relative thereto subsequent to issuance of a policy covering only subjects of insurance not resident, located, or expressly to be performed in Montana at time of issuance, and which coverage was lawfully solicited, written, and delivered outside Montana.

(3) Transactions pursuant to surplus lines coverages lawfully written pursuant to chapter 9 of this code.

(4) Reinsurance, except as to domestic reinsurers.

Section 48. **Admission for investment only.** A foreign insurer may transact business in this state without certificate of authority, for the purpose and to the extent only of investing its funds in Montana real estate or in securities secured thereby by complying with the applicable laws of this state other than this code. Such an insurer shall not be subject to any other provision of this code.

Admission for investment only.

Section 49. **General eligibility of insurers.** To qualify for and hold authority to transact insurance in this state an insurer must be otherwise in compliance with this code and with its charter powers, and must be an incorporated stock insurer, or an incorporated mutual insurer, or a reciprocal insurer, all of the same general type as may hereafter be formed as a domestic insurer under this code; except that:

Eligibility of insurers.

(1) No foreign insurer shall be authorized to transact insurance in Montana which does not maintain reserves as required by chapter 5 of this code applicable to the kind or kinds of insurance transacted by such insurer, wherever transacted in the United States; or which transacts business anywhere in the United States on the assessment plan, or stipulated premium plan, or any similar plan.

Reserves of foreign insurers.

(2) No foreign insurer which is directly or indirectly owned or controlled in whole or in substantial part by any government or governmental agency shall be authorized to transact insurance in Montana unless it was

Foreign insurer owned by government.

Certificate of authority required.

Requirement for doing business in foreign states.

Exceptions to requirement of certificate.

so owned and first so authorized prior to January 1, 1957. Membership or subscribership in a mutual or reciprocal insurer by virtue of being a policyholder thereof, or ownership of stock or other security which does not have voting rights with respect to the management of the insurer, or supervision of an insurer by public authority, shall not be deemed to be an ownership or control of the insurer for the purposes of this provision.

Name of insurer. Section 50. **Name of insurer.** (1) No insurer shall be authorized to transact insurance in this state which has or uses a name so similar to that of another insurer already so authorized as likely to mislead the public.

Name of life insurer. (2) No life insurer shall be authorized which has or uses a name deceptively similar to that of another insurer authorized to transact insurance in this state within the preceding ten (10) years of life insurance policies originally issued by such other insurer are still outstanding in this state.

Misleading name. (3) No insurer shall be so authorized which has or uses a name which tends to deceive or mislead as to the type of organization of the insurer.

Modification of name. (4) In case of conflict of names between two insurers, or a conflict otherwise prohibited under the foregoing subsections of this section, the commissioner may permit or require the more recently authorized insurer to use in Montana such supplementation or modification of its name or such business name as may reasonably be necessary to avoid such conflict.

Combinations of insuring powers. Section 51. **Combinations of insuring powers, one insurer.** An insurer which otherwise qualifies therefor may be authorized to transact any one kind or combination of kinds of insurance as defined in chapter 4 of this code, except:

Limitation on life insurers—exception. (1) A life insurer may also grant annuities, but shall not be authorized to transact any other kind of insurance other than disability; except, that if the insurer is otherwise qualified therefor the commissioner shall continue to so authorize any life insurer which, immediately prior to the effective date of this code, was lawfully authorized to transact in this state a kind or kinds of insurance in addition to life and disability.

(2) A reciprocal insurer shall not transact life insurance.

Limitation on reciprocal insurer.

(3) A title insurer shall be a stock insurer.

Limitation on title insurer.

Section 52. **Capital funds required.** (1) To qualify for authority to transact any one kind (as defined in chapter 4) of insurance, or combinations of kinds of insurance as shown below, an insurer shall possess and thereafter maintain unimpaired paid-in capital stock (if a stock insurer) or surplus (if a foreign mutual or foreign reciprocal insurer) in amount not less than as applicable under the schedule below and shall possess when first so authorized such additional funds as surplus as required under section 53 of this code:

Capital funds required.

Kind or kinds of insurance	Minimum capital or surplus required
Life	\$100,000.00
Disability	100,000.00
Life and disability	150,000.00
Property	200,000.00
Marine	200,000.00
Casualty	
All lines except workmen's compensation	200,000.00
All lines, including workmen's compensation	300,000.00
Surety	250,000.00
Title	100,000.00
Multiple lines (two or more: property, marine, casualty or surety)	400,000.00

Except, that an insurer holding a valid certificate of authority to transact insurance in this state immediately prior to the effective date of this code may, if otherwise qualified therefor, continue to be so authorized for a period of five (5) years from such effective date by maintaining the same amount of paid-in capital stock (if a stock insurer) or the same amount of surplus (if a mutual or reciprocal insurer) as required by the laws of this state for such authority immediately prior to such effective date, and shall after expiration of such five-year period have or receive authority to transact insurance in this state only if otherwise qualified therefor and

Exception.

while having and maintaining paid-in capital stock (if a stock insurer) or surplus (if a mutual or reciprocal insurer) in applicable amount as otherwise required under this section; except, further, that any such insurer shall not, within such five-year period, be granted authority to transact any other or additional kind of insurance unless it then fully complies with the requirements as to capital and surplus, as applied to all kinds of insurance it then proposes to transact, as provided by this code as to insurers applying for original certificates of authority under this code.

Surplus required.

(2) As to surplus required for qualification to transact one or more kinds of insurance and thereafter to be maintained, domestic mutual insurers shall be governed by chapter 22, and domestic reciprocal insurers shall be governed by chapter 25.

Base.

(3) Capital and surplus requirements shall be based upon all the kinds of insurance actually transacted or to be transacted by the insurer in any and all areas in which it operates, whether or not only a portion of such kinds are to be transacted in this state.

Life insurer may grant annuities.

(4) A life insurer may also grant annuities without additional capital or additional surplus.

Special surplus required.

Section 53. **Special surplus required.** In addition to the minimum paid-in capital stock (stock insurers) or minimum surplus (mutual and reciprocal insurers) required by section 52 of this code, special surplus shall be possessed by insurers as follows:

Stock, foreign, reciprocal and alien insurers.

(1) All stock insurers and foreign mutual and foreign reciprocal insurers which have actively transacted insurance in their state of domicile as an authorized insurer for less than five (5) years, or, if an alien insurer, have transacted insurance as an authorized insurer in at least one state of the United States for less than five (5) years, when first authorized to transact insurance in this state shall have a surplus or additional surplus equal to not less than one hundred percent (100%) of the paid-in capital stock (if a stock insurer) or surplus (if a foreign mutual or foreign reciprocal) otherwise required under section 52 for the kinds of insurance to be transacted.

(2) Insurers that have actively transacted insurance

as authorized insurers in one or more states of the United States for more than five (5) years shall possess when first authorized in this state, surplus or additional surplus equal to not less than fifty percent (50%) of the paid-in capital stock (if a stock insurer) or surplus (if a foreign mutual or foreign reciprocal insurer) otherwise required under section 52.

Insurers authorized in other states.

(3) Insurers authorized to transact multiple lines of insurance in this state shall at all times have and maintain surplus of not less than one hundred thousand dollars (\$100,000), in addition to the capital (if a stock insurer) or surplus (if a foreign mutual or foreign reciprocal insurer) required by section 52. The amount of such surplus shall be included within the surplus required of newly authorized insurers pursuant to subdivisions (1) and (2) of this section.

Multiple line insurers.

Section 54. **Deposit requirement.** (1) An insurer shall not be authorized to transact insurance in this state unless it makes and thereafter maintains in trust in this state through the commissioner for the protection of all its policyholders or of all its policyholders and creditors, a deposit of cash or securities eligible for deposit under section 134 of this code in an amount not less than the minimum paid-in capital stock (if a stock insurer) or minimum surplus (if a mutual or reciprocal insurer), other than special surplus, required to be maintained for authority to transact the kinds of insurance to be transacted, except:

Deposit for security required.

(a) As to title insurers, the deposit shall be in the amount of fifty thousand dollars (\$50,000).

Title insurers.

(b) As to foreign insurers, in lieu of such deposit or part thereof in this state, the commissioner shall accept the certificate in proper form of the public official having supervision over insurers in any other state to the effect that a like deposit or part thereof by such insurer is being maintained in public custody therein in trust for the purpose, (among other reasonable purposes of protection of policyholders and/or creditors) of the protection of all its policyholders, or policyholders and creditors, in Montana.

Foreign insurers.

(c) As to alien insurers, in lieu of such deposit or

Alien insurers.

part thereof in this state, the commissioner shall accept evidence satisfactory to him that the insurer maintains within the United States by way of trust deposits with public depositories, or in trust institutions approved by the commissioner, assets available for discharge of its United States insurance obligations which assets shall be in amount not less than the outstanding liabilities of the insurer arising out of its insurance transactions in the United States, together with the larger of the following sums: (i) The largest deposit required by this code to be made by foreign insurers transacting like kinds of insurance, or (ii) three hundred thousand dollars (\$300,000).

(2) Deposits of foreign or alien insurers in another state shall be in cash and/or securities of substantially the same quality as those eligible for deposit in this state under section 134 of this code.

(3) Deposits of reserves by domestic life insurers shall be made as provided in section 93.

(4) Deposits made in this state shall further be subject to the provisions of chapter 7 (administration of deposits).

Disqualification
of management
or affiliation.

Section 55. **Management and affiliations.** The commissioner shall not grant or continue authority to transact insurance in this state as to any insurer the principal management personnel of which is found by him to be untrustworthy or not of good character, or so lacking in insurance company managerial experience as to make the proposed operation hazardous to the insurance-buying public or to its stockholders; or which he has good reason to believe is affiliated directly or indirectly through ownership, control, management, reinsurance transactions or other insurance or business relations, with any person or persons whose business operations, to the detriment of insurers, stockholders, or creditors, are or have been marked by manipulation of assets, of accounts, or of reinsurance, or by bad faith.

Procedure—
application
for certificate
of authority.

Section 56. **Application for certificate of authority.** To apply for an original certificate of authority an insurer shall file with the commissioner its application therefor (accompanied by the applicable fees as specified in section 45) showing its name, location of its home of-

ice or principal office in the United States (if an alien insurer), kinds of insurance to be transacted, date of organization or incorporation, form of organization, state or country of domicile, and such additional information as the commissioner may reasonably require, together with the following documents, as applicable:

(1) If a foreign insurer, a copy of its corporate charter, or articles of incorporation, with all amendments thereto, certified by the public officer with whom the originals are on file in the state or country of domicile. Foreign insurer.

(2) If a mutual insurer, a copy of its bylaws as amended, certified by its secretary or other officer having custody thereof. Mutual insurer.

(3) If a reciprocal insurer, copies of the power of attorney of its attorney in fact and of its subscribers' agreement, if any, certified by its attorney in fact. Reciprocal insurer.

(4) A copy of its financial statement as of December 31 next preceding, sworn to by at least two (2) executive officers of the insurer, or certified by the public insurance supervisory official of the insurer's state of domicile or of entry into the United States. Financial statement.

(5) Copy of report of last examination, if any, made of the insurer, certified by the insurance supervisory official of its state of domicile or of entry into the United States. Report of examination.

(6) Appointment of the commissioner pursuant to section 63, as its attorney to receive service of legal process. Attorney, for service of process.

(7) If a foreign or alien insurer, a certificate of the public official having supervision of insurance in its state or country of domicile, or state of entry into the United States, showing that it is authorized to transact the kinds of insurance proposed to be transacted in this state. Certificate of foreign or alien official.

(8) If an alien insurer, a copy of the appointment and authority of its United States manager, certified by its officer having custody of its records. Authority of U. S. manager.

(9) If a foreign insurer, certificate as to deposit if to be tendered pursuant to section 54. Certificate of deposit.

Specimen
policies, rates.

(10) Specimen copies of policies proposed to be offered in this state, together with premiums or premium rates applicable, or a declaration that such rates as applicable will be those promulgated by designated rating organizations authorized to file such rates in this state on behalf of the insurer.

Issuance
or refusal
of authority.

Section 57. **Issuance or refusal of authority; ownership of certificate.** (1) If upon completion of its application the commissioner finds that the insurer has met the requirements for and is entitled thereto under this code, he shall issue to the insurer a proper certificate of authority; if he does not so find, the commissioner shall issue his order refusing such certificate. The commissioner shall act upon an application for a certificate of authority within thirty (30) days after its completion.

Certificate shall
specify kinds
of insurance.

(2) The certificate, if issued, shall specify the kind or kinds of insurance the insurer is authorized to transact in Montana. At the insurer's request, the commissioner may issue a certificate of authority limited to particular types of insurance or insurance coverages within the scope of a kind of insurance as defined in chapter 4 of this code.

Certificate
remains
property
of state.

(3) Although issued to the insurer the certificate of authority is at all times the property of the State of Montana. Upon any expiration, suspension, or termination thereof the insurer shall promptly deliver the certificate of authority to the commissioner.

Continuance
of certificate.

Section 58. **Continuance, expiration, reinstatement and amendment of certificate of authority.** (1) Certificates of authority issued or renewed under this code shall continue in force as long as the insurer is entitled thereto under this code and until suspended or revoked, or otherwise terminated; subject, however, to continuance of the certificate by the insurer each year by payment prior to May 15th of the continuation fee provided in section 45.

Expiration.

(2) If not so continued by the insurer, its certificate of authority shall expire as at midnight on May 31 next following such failure of the insurer so to continue it in force. The commissioner shall promptly notify the insurer of the occurrence of any such failure resulting in impending expiration of its certificate of authority.

Reinstatement.

(3) The commissioner may, in his discretion, reinstate a certificate of authority which the insurer has inadvertently permitted to expire, after the insurer has fully cured all its failures which resulted in such expiration, and upon payment by the insurer of the fee for reinstatement in addition to the current continuation fee, as provided in section 45. Otherwise, the insurer shall be granted another certificate of authority only after filing application therefor and meeting all other requirements as for an original certificate of authority in this state.

Amendment.

(4) The commissioner may amend a certificate of authority at any time to accord with changes in the insurer's charter of insuring powers.

Mandatory
revocation,
suspension
of certificate.

Section 59. **Mandatory revocation, suspension of certificate of authority.** (1) The commissioner shall suspend or revoke an insurer's certificate of authority:

(a) If such action is required by any provision of this code;

(b) If the insurer no longer meets the requirements for the authority originally granted, on account of deficiency of assets or otherwise; or

(c) If the insurer's authority to transact insurance is suspended or revoked by its state of domicile, or state of entry into the United States if an alien insurer.

(2) Except in cases of insolvency or impairment of required capital or surplus, or suspension or revocation by another state as referred to in subdivision (c) above, the commissioner shall give the insurer at least fifteen (15) days notice in advance of any such suspension or revocation under this section.

Discretionary
suspension,
revocation.

Hearing.

Section 60. **Suspension or revocation for violations and special grounds.** (1) The commissioner may, in his discretion, suspend or revoke an insurer's certificate of authority if, after a hearing thereon, he finds that the insurer has violated any lawful order of the commissioner or any provision of this code other than those for which suspension or revocation is mandatory.

(2) The commissioner shall, after a hearing thereon,

Violations and
special grounds.

suspend or revoke an insurer's certificate of authority if he finds that the insurer:

(a) Is in unsound condition, or in such condition, or using such methods or practices in the conduct of its business, as to render its further transaction of insurance in Montana injurious or hazardous to its policyholders or to the public.

(b) Has refused to be examined or to produce its accounts, records, and files for examination, or if any of its officers have refused to give information with respect to its affairs, when required by the commissioner.

(c) Has failed to pay any final judgment rendered against it in Montana within thirty (30) days after the judgment became final.

(d) With such frequency as to indicate its general business practice in Montana, has without just cause refused to pay proper claims arising under its policies, whether any such claim is in favor of an insured or is in favor of a third person with respect to the liability of an insured to such third person, or without just cause compels such insured or claimant to accept less than the amount due them or to employ attorneys or to bring suit against the insurer or such an insured to secure full payment or settlement of such claims.

(e) Is affiliated with and under the same general management or interlocking directorate or ownership as another insurer which transacts direct insurance in Montana without having a certificate of authority therefor, except as permitted as to a surplus line insurer under chapter 9.

(3) The commissioner may, in his discretion and without advance notice or a hearing thereon, immediately suspend the certificate of authority of any insurer as to which proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings, have been commenced in any state.

Section 61. Notice of suspension or revocation; effect upon agent's authority. (1) Upon suspending or revoking an insurer's certificate of authority the commis-

Notice of
suspension
or revocation
of certificate.

sioner shall forthwith give notice thereof to the insurer and to its agents in this state of record in the commissioner's office.

(2) Such suspension or revocation shall likewise automatically suspend or revoke, as the case may be, the authority of all such agents to act as agents of the insurer in this state, and the commissioner shall so state in the notice to agents provided for in subsection (1).

Authority of
agent suspended
or revoked.

(3) In his discretion the commissioner may also publish notice of such revocation in one or more newspapers of general circulation published in this state.

Publication.

Section 62. Duration of suspension; insurer's obligations; reinstatement. (1) Suspension of an insurer's certificate of authority shall be for such period as is fixed by the commissioner, in the order of suspension, but not to exceed one year. During the suspension the commissioner may shorten the period thereof by his further order.

Duration
of suspension.

(2) During the period of the suspension the insurer shall file its annual statement, pay fees, licenses and taxes as required under this code as if the certificate had continued in full force.

Duties of insurer
during
suspension.

(3) Upon expiration of the suspension period (if within such period the certificate of authority has not been terminated) the insurer's certificate of authority shall automatically reinstate, unless the commissioner finds that the causes of the suspension have not been removed, or that the insurer is otherwise not in compliance with the requirements of this code, and of which the commissioner shall give the insurer notice not less than thirty (30) days in advance of the expiration of such period. If not so automatically reinstated the certificate of authority shall be deemed to have expired as at the end of the suspension period or upon failure of the insurer to continue the certificate during the suspension period, whichever event shall first occur.

Automatic
reinstatement
except for cause.

(4) Upon reinstatement of the insurer's certificate of authority, the authority of its agents in this state to represent the insurer shall likewise reinstate.

Reinstatement—
agent's
authority.

(5) The commissioner shall forthwith notify both the

Notice of
reinstatement.

insurer and its agents in this state, as shown by his records, of such reinstatement.

Appointment of
commissioner
as attorney for
service of process.

Section 63. **Commissioner attorney for service of process.** (1) Each insurer applying for authority to transact insurance in this state shall appoint the commissioner, and his successors in office, as its attorney to receive service of legal process issued against it in Montana. The appointment shall be made on a form as designated and furnished by the commissioner. The appointment shall be irrevocable, shall bind the insurer and any successor in interest or to the assets or liabilities of the insurer, and shall remain in effect as long as there is in force in Montana any contract made by the insurer or obligations arising therefrom.

Method of
service of process.

(2) Service of such process against a foreign or alien insurer shall be made only by service of process upon the commissioner, or upon a deputy or other person in charge of his office during his absence. Service of process against a domestic insurer may be made either upon the commissioner or upon the insurer corporation in the manner provided by laws applying to corporations generally, or upon the insurer's attorney-in-fact if a domestic reciprocal insurer.

Designation
of person to
receive process.

(3) Each insurer at time of application for a certificate of authority shall file with the commissioner designation of the name and address of the person to whom process against it served upon the commissioner is to be forwarded. The insurer may change such designation by a new filing.

Procedure for
serving process.

Section 64. **Serving process; time to plead.** (1) Duplicate copies of legal process against an insurer for whom the commissioner is attorney pursuant to section 63, shall be served upon the commissioner, or upon his deputy or other person in charge of his office during his absence. At the time of service the plaintiff shall pay to the commissioner three dollars (\$3), taxable as costs in the action. Upon receiving such service the commissioner shall promptly forward a copy thereof by certified or registered mail to the person last so designated by the insurer to receive the same.

Time to plead.

(2) Where process is served upon the commissioner

as an insurer's attorney, the insurer shall have thirty (30) days within which to appear, answer, or plead after date of mailing of the copy thereof by the commissioner, exclusive of date of mailing, as provided by subsection (1).

(3) Process served upon the commissioner and copy thereof forwarded as in this section provided shall constitute service thereof upon the insurer.

Constitutes
service.

Section 65. **Annual statement.** (1) Each authorized insurer shall annually on or before March 1 file with the commissioner a full and true statement of its financial condition, transactions, and affairs as of the December 31 preceeding. The statement shall be in such general form and context as is required or not disapproved by the commissioner, and as is in current use for similar reports to states in general with respect to the type of insurer and kinds of insurance to be reported upon, and as supplemented for additional information required by the commissioner. The statement shall be verified by the oath of the insurer's president or vice president, and secretary, or, if a reciprocal insurer, by the oath of the attorney-in-fact or its like officers if a corporation. The commissioner may, in his discretion, waive any such verification under oath.

Annual
statement
of insurer.

Verification.

Waiver.

(2) The statement of an alien insurer shall relate only to its transactions and affairs in the United States unless the commissioner requires otherwise. If the commissioner requires a statement as to an alien insurer's affairs throughout the world, the insurer shall file such statement with the commissioner as soon as reasonably possible. The statement shall be verified by the insurer's United States manager or other officer duly authorized.

Statement of
alien insurer.

(3) The commissioner may refuse to accept fee for continuance of the insurer's certificate of authority, as provided in section 58, or may in his discretion suspend or revoke the certificate of authority of any insurer failing to file its annual statement when due.

Enforcement.

(4) At time of filing, the insurer shall pay to the commissioner the fee for filing its statement as prescribed in section 45.

Fee for filing
statement.

Insurer's annual
report on
premium income.

Section 66. **Tax.** (1) Each authorized insurer, and each formerly authorized insurer with respect to premiums so received while an authorized insurer in this state, shall file with the commissioner, on or before March 1 each year, a report (except as to wet marine and transportation insurance taxed under subsection (3) below) in form as prescribed by the commissioner showing total direct premium income including policy, membership and other fees, premiums paid by application of dividends, refunds, savings, savings coupons, and similar returns or credits to payment of premiums for new or additional or extended or renewed insurance, charges for payment of premium in installments, and all other consideration for insurance from all kinds and classes of insurance whether designated as a premium or otherwise, received by it during the preceding calendar year on account of policies covering property, subjects, or risks located, resident, or to be performed in Montana (with proper proportionate allocation of premium as to such property, subjects, or risks in Montana insured under policies or contracts covering property, subjects, or risks located or resident in more than one state), after deducting from such total direct premium income applicable cancellations, returned premiums, the unabsorbed portion of any deposit premium, the amount of reduction in or refund of premiums allowed to industrial life policyholders for payment of premiums direct to an office of the insurer, all policy dividends, refunds, savings, savings coupons and other similar returns paid or credited to policyholders with respect to such policies. As to title insurance "premium" includes only the risk portion of the charge for such insurance. No deduction shall be made of the cash surrender values of policies. Considerations received on annuity contracts shall not be included in total direct premium income and shall not be subject to tax.

Payment of
premium taxes.

(2) Coincident with the filing of the tax report referred to in subsection (1) above, each such insurer shall pay to the commissioner a tax upon such net premiums, the tax to be computed at the rate of two percent of such premiums.

Provided, that where any insurer has not less than fifty percent of its paid-in capital stock invested in Mon-

tana securities, the insurer shall be allowed to deduct whatever tax it may have already paid to the State of Montana and its political subdivisions, during the same calendar year as to which premium tax is being paid, from the amount otherwise due under this section. For the purpose of this provision "paid-in capital stock" as to a mutual or reciprocal insurer shall be deemed to be an amount equal to ten percent of the insurer's assets; and "Montana securities" shall be deemed to include only general obligations of the State of Montana or of its political subdivisions, mortgage loans secured by a first lien upon real estate located in Montana, and real estate located in Montana owned by the insurer, all if otherwise lawful investments of the insurer under this code.

(3) (a) On or before March 1 of each year each insurer shall file with the commissioner, on forms as prescribed and furnished or accepted by him, a report of its gross underwriting profit on wet marine and transportation insurance, as defined in section 78, written in this state during the calendar year next preceding, and shall at the same time pay to the commissioner a tax of three-quarters of one percent of such gross underwriting profit.

Insurer's annual
report on
underwriting
profit on wet
marine and
transportation
insurance.

Taxes.

(b) Such gross underwriting profit shall be ascertained by deducting from the net premiums (i.e. gross premiums less all return premiums and premiums for reinsurance) on such wet marine and transportation insurance contracts the net losses paid (i.e. gross losses paid less salvage and recoveries on reinsurance ceded) during such calendar year under such contracts. In the case of insurers issuing participating contracts, such gross underwriting profit shall not include for computation of the tax prescribed by this subsection (3) the amounts refunded, credited or paid as participation dividends or savings by such insurers to the holders of such contracts.

Computation
of profit.

(4) That portion of the tax paid hereunder by an insurer on account of premiums received for fire insurance shall be separately specified in the report as required by the commissioner, for apportionment as provided by law. Where insurance against fire is included

Specification
of fire insurance
premium taxes.

with insurance of property against other perils at an undivided premium, the insurer shall make such reasonable allocation from such entire premium to the fire portion of the coverage as shall be stated in such report and as may be approved or accepted by the commissioner.

Scope of taxes paid.

(5) With respect to authorized insurers the premium tax provided by this section shall be payment in full and in lieu of all other demands for any and all state, county, city, district, municipal, and school taxes, licenses, fees and excises of whatever kind or character, excepting only those prescribed by this code, taxes on real and tangible personal property located in this state and taxes payable under section 82-1231, Revised Codes of Montana, 1947 (tax for support of state fire marshal activities), and demands for state, county, city, district, municipal, and school taxes, licenses, fees, and excises made because of operations prior to January 1, 1957.

State pre-emption of tax fields.

(6) The State of Montana hereby preempts the field of imposing excise, privilege, franchise, income, license, and similar taxes, licenses, and fees upon insurers and their general agents and agents as such, and on the intangible property of insurers or such agents; and no county, city, municipality, district, school district, or other political subdivision or agency in Montana shall levy upon insurers, or upon their general agents and agents as such, any such tax, license, or fee additional to such as are levied by the legislative assembly of Montana in this code.

Enforcement of tax payment.

(7) The commissioner may suspend or revoke the certificate of authority of any insurer which fails to pay its taxes as required under this section.

Applies to taxable years after December 31, 1960.

(8) The provisions of this section shall apply to taxable years beginning after December 31, 1960.

Resident agent required.

Section 67. Resident agent required; countersignature; records; exceptions. (1) No authorized insurer shall issue a policy covering a subject of insurance resident, located, or to be performed in Montana unless the policy is written through a licensed agent resident in Montana of the insurer, nor unless the policy or countersignature endorsement attached thereto is countersigned by such agent.

Countersignature.

(2) No such countersignature shall be made in blank. The agent may by express written authorization given in advance delegate to his salaried clerical employee the power to so countersign in the name of the agent such contracts or classes of contracts as are designated in such authorization, so long as the initials of such employee are written below the agent's name on such countersignature; but the agent shall not thereby delegate, or have power to delegate, to any other person the power or authority to bind an insurer with respect to any risk not already bound by the agent or other person having clear authority from the insurer so to bind. The agent shall be responsible for all of the acts of such employee within the scope of the authority so delegated. The agent shall keep a record of each and all coverages countersigned by him or by his authority.

Exceptions.

(3) This section shall not apply to:

(a) Reinsurance.

(b) Life insurance, disability insurance or annuity contracts.

(c) Insurance of the rolling stock, vessels or aircraft of any common carrier in interstate or foreign commerce, or of any vehicle principally garaged and used in another state, or covering any liability or other risks incident to the ownership, maintenance or operation thereof.

(d) Insurance of property in course of transportation interstate or in foreign trade, or any liability or risk incident thereto.

(e) Insurance of wet marine and transportation risks.

(f) With respect to countersignature to policies issued through agents compensated only by salary or issued by insurers not using agents in the general solicitation of business.

(4) Violation of this section shall not invalidate any contract otherwise valid as between the insurer and the insured.

Section 68. Salaried personnel cannot countersign; exception for emergencies. (1) With respect to policies subject to countersignature requirements under section

Power to countersign.

67, only a licensed agent of the insurer resident in Montana, whose compensation as such agent is by commission computed as a percentage of the premium received on each such policy written, shall have power to countersign as required by section 67.

Countersignature
in event of
emergency.

(2) No branch manager, state agent, special agent, general or any other like supervisory agent or any other representative of the insurer, whose compensation therefrom is in whole or in part by salary, shall have power to countersign such policies or countersignature endorsements thereto; except, that in an emergency where it is necessary that an insurance policy be issued without delay and no resident agent of the insurer having power to execute the policy is then reasonably available, then any other individual having authority therefor from the insurer may execute such policy in the first instance in order to make a contract between the insurer and the obligee or the insured, if such policy is subsequently countersigned in fact by such a resident agent.

Countersignature
fee on foreign
policies.

Section 69. **Policies originating outside state, commission of resident agent.** (1) As to policies or endorsements thereto which are subject to countersignature requirements under section 67 contracted for or otherwise originating outside the boundaries of Montana, there shall be payable to the countersigning agent, resident in Montana, a commission which shall not be less than five percent (5%) of the premium charged and received, but not to exceed fifty percent (50%) of the commission paid by the insurer, so that a record within Montana will be kept of such business and that the state may better receive any tax required by law to be paid with respect to such insurance. If, however, the originating agent or broker, or the insurer, desires additional service to be rendered during the term of the policy, then the compensation for such countersigning resident agent shall be in such additional amount as is fixed by mutual agreement of such parties in interest.

Reciprocal fees.

(2) Except, that if pursuant to the laws of another state the countersigning agents of that state retain as commission or compensation with respect to business originated by Montana agents more than five percent (5%) of the premium, then Montana agents who countersign policies representing business originated by

agents or brokers of such other state shall charge and receive a commission in amount not less than that so received by countersigning agents of the other state.

Countersignature
of policies issued
by home or
branch office.

Section 70. **Policies issued at home or branch offices.** Nothing in sections 67 through 69 shall prevent any insurer from issuing any policy, as to which the resident agent or countersignature requirement of section 67 is applicable, at its home or branch office, but such policies shall be subsequently countersigned, where otherwise required, by its agent resident in Montana and the insurer's licensed agent resident in Montana shall receive the commission on such policy when the premium is paid. This section does not apply as to life insurance.

Section 71. **Retaliation.** (1) When by or pursuant to the laws of any other state or foreign country any taxes, licenses and other fees, in the aggregate, and any fines, penalties, deposit requirements or other material obligations, prohibitions or restrictions are or would be imposed upon Montana insurers, or upon the agents or representatives of such insurers, which are in excess of such taxes, licenses and other fees, in the aggregate, or which are in excess of the fines, penalties, deposit requirements or other obligations, prohibitions, or restrictions directly imposed upon similar insurers, or upon the agents or representatives of such insurers, of such other state or country under the statutes of this state, so long as such laws of such other state or country continue in force or are so applied, the same taxes, licenses and other fees, in the aggregate, or fines, penalties or deposit requirements or other material obligations, prohibitions, or restrictions of whatever kind shall be imposed by the commissioner upon the insurers, or upon the agents or representatives of such insurers, of such other state or country doing business or seeking to do business in Montana. Any tax, license or other fee or other obligation imposed by any city, county, or other political subdivision or agency of such other state or country on Montana insurers or their agents or representatives shall be deemed to be imposed by such state or country within the meaning of this section.

Retaliation.

(2) This section shall not apply as to personal income taxes, nor as to ad valorem taxes on real or per-

sonal property nor as to special purpose obligations or assessments imposed by another state in connection with particular kinds of insurance other than property insurance; except that deductions, from premium taxes or other taxes otherwise payable, allowed on account of real estate or personal property taxes paid shall be taken into consideration by the commissioner in determining the propriety and extent of retaliatory action under this section.

Domicile defined.

(3) For the purposes of this section the domicile of an alien insurer, other than insurers formed under the laws of Canada, shall be that state designated by the insurer in writing filed with the commissioner at time of admission to this state or within six (6) months after the effective date of this code, whichever date is the later, and may be any one of the following states:

(a) That in which the insurer was first authorized to transact insurance;

(b) That in which is located the insurer's principal place of business in the United States;

(c) That in which is held the larger deposit of trusted assets of the insurer for the protection of its policyholders and creditors in the United States.

If the insurer makes no such designation its domicile shall be deemed to be that state in which is located its principal place of business in the United States.

CHAPTER 4—KINDS OF INSURANCE; LIMITS OF RISK; REINSURANCE

Definitions not mutually exclusive.

Section 72. **Definitions not mutually exclusive.** It is intended that certain insurance coverages may come within the definitions of two or more kinds of insurance as defined in this chapter, and the inclusion of such coverage within one definition shall not exclude it as to any other kind of insurance within the definition of which such coverage may likewise be reasonably included.

"Life insurance" defined.

Section 73. **"Life insurance" defined.** Life insurance is insurance on human lives. The transaction of life insurance includes also the granting of endowment benefits, additional benefits in event of death or dismember-

ment by accident or accidental means, additional benefits in event of the insured's disability, and optional modes of settlement of proceeds of life insurance. Transaction of life insurance does not include workmen's compensation insurance.

Section 74. **"Disability insurance" defined.** Disability insurance is insurance of human beings against bodily injury, disablement, or death by accident or accidental means, or the expense thereof, or against disablement or expense resulting from sickness, and every insurance appertaining thereto. Transaction of disability insurance does not include workmen's compensation insurance.

"Disability insurance" defined.

Section 75. **"Property insurance" defined.** Property insurance is insurance on real or personal property of every kind and of every interest therein, whether on land, water, or in the air, against loss or damage from any and all hazard or cause, and against loss consequential upon such loss or damage, other than noncontractual legal liability for any such loss or damage.

"Property insurance" defined.

Section 76. **"Casualty insurance" defined.** (1) Casualty insurance includes: (a) Vehicle insurance. Insurance against loss of or damage to any land vehicle or aircraft or any draft or riding animal or to property while contained therein or thereon or being loaded or unloaded therein or therefrom, from any hazard or cause, and against any loss, liability or expense resulting from or incidental to ownership, maintenance or use of any such vehicle, aircraft or animal; together with insurance against accidental death or accidental injury to individuals, including the named insured, while in, entering, alighting from, adjusting, repairing, cranking, or caused by being struck by a vehicle, aircraft or draft or riding animal, if such insurance is issued as an incidental part of insurance on the vehicle, aircraft or draft or riding animal.

"Casualty insurance" defined.

(b) Liability insurance. Insurance against legal liability for the death, injury, or disability of any human being, or for damage to property; and provision of medical, hospital, surgical, disability benefits to injured persons and funeral and death benefits to dependents, beneficiaries or personal representatives of persons killed,

Liability insurance.

irrespective of legal liability of the insured, when issued as an incidental coverage with or supplemental to liability insurance.

Workmen's
compensation
and employer's
liability.

(c) Workmen's compensation and employer's liability. Insurance of the obligations accepted by, imposed upon, or assumed by employers under law for death, disablement, or injury of employees.

Burglary
and theft.

(d) Burglary and theft. Insurance against loss or damage by burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation, or wrongful conversion, disposal, or concealment, or from any attempt at any of the foregoing; including supplemental coverage for medical, hospital, surgical, and funeral expense incurred by the named insured or any other person as a result of bodily injury during the commission of a burglary, robbery, or theft by another; also insurance against loss of or damage to moneys, coins, bullion, securities, notes, drafts, acceptances, or any other valuable papers and documents, resulting from any cause.

Personal
property
floater.

(e) Personal property floater. Insurance upon personal effects against loss or damage from any cause under a personal property floater.

Glass.

(f) Glass. Insurance against loss or damage to glass, including its lettering, ornamentation, and fittings.

Boiler and
machinery.

(g) Boiler and machinery. Insurance against any liability and loss or damage to property or interest resulting from accident to or explosions of boilers, pipes, pressure containers, machinery, or apparatus, and to make inspection of and issue certificates of inspection upon boilers, machinery, and apparatus of any kind, whether or not insured.

Leakage and fire
extinguishing
equipment.

(h) Leakage and fire extinguishing equipment. Insurance against loss or damage to any property or interest caused by the breakage or leakage of sprinklers, hoses, pumps, and other fire extinguishing equipment or apparatus, water pipes or containers, or by water entering through leaks or openings in buildings, and insurance against loss or damage to such sprinklers, hoses, pumps, and other fire extinguishing equipment or apparatus.

(i) Credit. Insurance against loss or damage resulting from failure of debtors to pay their obligations to the insured.

Credit.

(j) Malpractice. Insurance against legal liability of the insured, and against loss, damage, or expense incidental to a claim of such liability, and including medical, hospital, surgical, and funeral benefits to injured persons, irrespective of legal liability of the insured, arising out of the death, injury, or disablement of any person, or arising out of damage to the economic interest of any person, as the result of negligence in rendering expert, fiduciary, or professional service.

Malpractice.

(k) Elevator. Insurance against loss of or damage to any property of the insured, resulting from the ownership, maintenance or use of elevators, except loss or damage by fire, and to make inspection of and issue certificates of inspection upon, elevators.

Elevator.

(l) Livestock. Insurance against loss or damage to livestock, and services of a veterinary for such animals.

Livestock.

(m) Entertainments. Insurance indemnifying the producer of any motion picture, television, radio, theatrical, sport, spectacle, entertainment, or similar production, event, or exhibition against loss from interruption, postponement, or cancellation thereof due to death, accidental injury, or sickness of performers, participants, directors, or other principals.

Entertainments.

(n) Miscellaneous. Insurance against any other kind of loss, damage, or liability properly a subject of insurance and not within any other kind of insurance as defined in this chapter, if such insurance is not disapproved by the commissioner as being contrary to law or public policy.

Miscellaneous.

(2) Provision of medical, hospital, surgical, and funeral benefits, and of coverage against accidental death or injury, as incidental to and part of other insurance as stated under subdivisions (a) (vehicle), (b) (liability), (d) (burglary), and (j) (malpractice) of subsection (1) shall for all purposes be deemed to be the same kind of insurance to which it is so incidental, and shall not be subject to provisions of this code applicable to life or disability insurances.

Medical, hospital,
surgical, funeral,
accidental death
or injury.

"Surety insurance" defined.

Section 77. **"Surety insurance" defined.** Surety insurance includes:

Fidelity.

(1) Fidelity insurance, which is insurance guaranteeing the fidelity of persons holding positions of public or private trust.

Guaranteeing performance.

(2) Insurance guaranteeing the performance of contracts, other than insurance policies, and guaranteeing and executing bonds, undertakings, and contracts of suretyship.

Indemnification.

(3) Insurance indemnifying banks, bankers, brokers, financial or moneyed corporations or associations against check forgery or alteration, or against loss, resulting from any cause, of bills of exchange, notes, bonds, securities, evidences of debt, deeds, mortgages, warehouse receipts or other valuable papers, documents, money, precious metals and articles made therefrom, jewelry, watches, necklaces, bracelets, gems, precious and semi-precious stones, including any loss while the same are being transported in armored motor vehicles, by mail, or by messenger, but not including any other risks of transportation or navigation; also insurance against loss or damage to such an insured's premises or to his furnishings, fixtures, equipment, safes, and vaults therein, caused by burglary, robbery, theft, vandalism or malicious mischief, or any attempt thereat.

"Marine," "wet marine and transportation" defined.

Section 78. **"Marine," "wet marine and transportation" insurance defined.** (1) "Marine insurance" includes:

(a) Insurance against any and all kinds of loss or damage to:

(i) Vessels, craft, aircraft, cars, automobiles and vehicles of every kind, as well as all goods, freights, cargoes, merchandise, effects, disbursements, profits, monies, bullion, precious stones, securities, choses in action, evidences of debt, valuable papers, bottomry and respondentia interests and all other kinds of property and interests therein, in respect to, appertaining to or in connection with any and all risks or perils of navigation, transit, or transportation, including war risks, on or under any seas or other waters, on land or in the air, or while being assembled, packed, crated, baled, compressed

or similarly prepared for shipment or while awaiting the same or during any delays, storage, transshipment, or reshipment incident thereto, including marine builder's risks and all personal property floater risks, and

(ii) Person or to property in connection with or appertaining to a marine, inland marine, transit or transportation insurance, including liability for loss of or damage to either, arising out of or in connection with the construction, repair, operation, maintenance or use of the subject matter of such insurance (but not including life insurance or surety bonds nor insurance against loss by reason of bodily injury to the person arising out of the ownership, maintenance or use of automobiles), and

(iii) Precious stones, jewels, jewelry, gold, silver and other precious metals, whether used in business or trade or otherwise and whether the same be in course of transportation or otherwise, and

(iv) Bridges, tunnels and other instrumentalities of transportation and communication (excluding buildings, their furniture and furnishings, fixed contents and supplies held in storage) unless fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot and/or civil commotion are the only hazards to be covered; piers, wharves, docks and slips, excluding the risks of fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot and/or civil commotion; other aids to navigation and transportation, including dry docks and marine railways, against all risks.

(b) "Marine protection and indemnity insurance," meaning insurance against, or against legal liability of the insured for, loss, damage or expense arising out of, or incident to, the ownership, operation, chartering, maintenance, use, repair or construction of any vessel, craft or instrumentality in use in ocean or inland waters, including liability of the insured for personal injury, illness or death or for loss of or damage to the property of another person.

(2) For the purposes of this code "wet marine and transportation" insurance is that part of marine insurance which includes only:

(a) Insurance upon vessels, crafts, hulls and of interests therein or with relation thereto;

(b) Insurance of marine builder's risks, marine war risks and contracts of marine protection and indemnity insurance;

(c) Insurance of freights and disbursements pertaining to a subject of insurance coming within this subsection; and

(d) Insurance of personal property and interests therein, in course of exportation from or importation into any country, and in course of transportation coastwise or on inland waters, including transportation by land, water, or air from point of origin to final destination, in respect to, appertaining to or in connection with, any and all risks or perils of navigation, transit or transportation, and while being prepared for and while awaiting shipment, and during any delays, storage, transshipment or reshipment incident thereto.

"Title insurance" defined.

Section 79. **"Title insurance" defined.** Title insurance is insurance of owners of property or others having an interest therein, or liens or encumbrances thereon, against loss by encumbrance, or defective titles, or invalidity, or adverse claim to title.

Limit of risk.

Section 80. **Limit of risk.** (1) No insurer shall retain any risk on any one subject of insurance, whether located or to be performed in this state or elsewhere, in an amount exceeding ten percent (10%) of its surplus to policyholders.

"Subject of insurance" defined.

(2) A "subject of insurance" for the purposes of this section, as to insurance against fire and hazards other than windstorm, earthquake, or other catastrophe hazards, includes all properties insured by the same insurer which are customarily considered by underwriters to be subject to loss or damage from the same fire or the same occurrence of such other hazard insured against.

Deductions.

(3) Reinsurance ceded as authorized by section 81 of this code shall be deducted in determining risk retained. As to surety risks, deduction shall also be made of the amount assumed by any established incorporated co-surety and the value of any security deposited,

pledged, or held subject to the surety's consent and for the surety's protection.

(4) As to alien insurers, this section shall relate only to risks and surplus to policyholders of the insurer's United States branch.

Alien insurers.

(5) "Surplus to policyholders" for the purposes of this section, in addition to the insurer's capital and surplus shall be deemed to include any voluntary reserves which are not required pursuant to law, and shall be determined from the last sworn statement of the insurer on file with the commissioner, or by the last report of examination of the insurer, whichever is the more recent at time of assumption of risk.

"Surplus to policyholders" defined.

(6) This section shall not apply to life or disability insurance, title insurance, insurance of wet marine and transportation risks, workmen's compensation insurance, employer's liability coverages, sprinklered risks, nor to any policy or type of coverage as to which the maximum possible loss to the insurer is not readily ascertainable on issuance of the policy.

Exceptions.

Section 81. **Reinsurance.** (1) An insurer may accept reinsurance only of such kinds of risks, and retain risk thereon within such limits, as it is otherwise authorized to insure.

Reinsurance, authority to accept.

(2) An insurer may reinsure all or part of any particular risk with any solvent insurer authorized to transact insurance in one or more states and having surplus to policyholders in amount not less than the paid-in capital stock required of a domestic stock insurer transacting like kinds of insurance.

Authority to reinsure.

(3) No credit shall be allowed to an insurer, as an asset or as a deduction from liability, for reinsurance ceded to an alien insurer unless such alien insurer has surplus to policyholders in amount not less than the paid-in capital stock required of a domestic stock insurer transacting like kinds of insurance and is either (a) authorized to transact insurance in at least one state of the United States, or (b) has an attorney-in-fact resident in the United States upon whom service of legal process may be made.

Requirements for credit—as to alien insurer.

As to ceding insurer.

(4) Credit shall be allowed as an asset or as a deduction from liability, to any ceding insurer for reinsurance ceded to an assuming insurer qualified therefor under the foregoing provisions of this section; except that no such credit shall be allowed unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contracts reinsured without diminution because of the insolvency of the ceding insurer.

Information regarding changes in reinsurance treaties.

(5) Upon request of the commissioner an insurer shall promptly inform the commissioner in writing of the cancellation or any other material change of any of its reinsurance treaties or arrangements.

Exception.

(6) This section shall not apply to wet marine and transportation insurance.

CHAPTER 5—ASSETS AND LIABILITIES

"Assets" defined to determine insurer's financial condition.

Section 82. "**Assets**" defined. In any determination of the financial condition of an insurer, there shall be allowed as assets only such assets as are owned by the insurer and which consist of:

(1) Cash in the possession of the insurer, or in transit under its control, and including the true balance of any deposit in a solvent bank or trust company.

(2) Investments, securities, properties and loans acquired or held in accordance with this code, and in connection therewith the following items:

(a) Interest due or accrued on any bond or evidence of indebtedness which is not in default and which is not valued on a basis including accrued interest.

(b) Declared and unpaid dividends on stock and shares, unless such amount has otherwise been allowed as an asset.

(c) Interest due or accrued upon a collateral loan in an amount not to exceed one year's interest thereon.

(d) Interest due or accrued on deposits in solvent banks and trust companies, and interest due or accrued on other assets, if such interest is in the judgment of the commissioner a collectible asset.

(e) Interest due or accrued on a mortgage loan, in an amount not exceeding in any event the amount, if any, of the excess of the value of the property less delinquent taxes thereon over the unpaid principal; but in no event shall interest accrued for a period in excess of eighteen (18) months be allowed as an asset.

(f) Rent due or accrued on real property if such rent is not in arrears for more than three months, and rent more than three months in arrears if the payment of such rent be adequately secured by property held in the name of the tenant and conveyed to the insurer as collateral.

(g) The unaccrued portion of taxes paid prior to the due date on real property.

(3) Premium notes, policy loans, and other policy assets and liens on policies and certificates of life insurance and annuity contracts and accrued interest thereon, in an amount not exceeding the legal reserve and other policy liabilities carried on each individual policy.

(4) The net amount of uncollected and deferred premiums and annuity considerations in the case of a life insurer.

(5) Premiums in the course of collection, other than for life insurance, not more than three (3) months past due, less commissions payable thereon. The foregoing limitation shall not apply to premiums payable directly or indirectly by the United States government or by any of its instrumentalities.

(6) Installment premiums other than life insurance premiums to the extent of the unearned premium reserve carried on the policy to which premiums apply.

(7) Notes and like written obligations not past due, taken for premiums other than life insurance premiums, on policies permitted to be issued on such basis, to the extent of the unearned premium reserves carried thereon.

(8) The full amount of reinsurance recoverable by a ceding insurer from a solvent reinsurer and which reinsurance is authorized under section 81.

(9) Amounts receivable by an assuming insurer representing funds withheld by a solvent ceding insurer under a reinsurance treaty.

(10) Deposits or equities recoverable from underwriting associations, syndicates and reinsurance funds, or from any suspended banking institution, to the extent deemed by the commissioner available for the payment of losses and claims and at values to be determined by him.

(11) Electronic data processing machines if the cost of each such machine is at least one hundred thousand dollars, which cost shall be amortized in full over a period of not to exceed ten calendar years.

(12) All assets, whether or not consistent with the provisions of this section, as may be allowed pursuant to the annual statement form approved by the commissioner for the kinds of insurance to be reported upon therein.

(13) Other assets, not inconsistent with the provisions of this section, deemed by the commissioner to be available for the payment of losses and claims, at values to be determined by him.

Assets as
deductions from
liabilities.

Section 83. **Assets as deductions from liabilities.** Assets may be allowed as deductions from corresponding liabilities, and liabilities may be charged as deductions from assets, and deductions from assets may be charged as liabilities, in accordance with the form of annual statement applicable to the insurer as prescribed by the commissioner, or otherwise in his discretion.

Assets
not allowed.

Section 84. **Assets not allowed.** In addition to assets impliedly excluded by the provisions of section 82 of this chapter, the following expressly shall not be allowed as assets in any determination of the financial condition of an insurer:

(1) Good will, trade names and other like intangible assets.

(2) Advances to officers (other than policy loans) whether secured or not, and advances to employees, agents and other persons on personal security only.

(3) Stock of such insurer, owned by it, or any equity therein or loans secured thereby, or any proportionate interest in such stock acquired or held through the own-

ership by such insurer of an interest in another firm, corporation or business unit.

(4) Furniture, fixtures (other than electronic data processing machines authorized under section 82 (11)), furnishings, safes, vehicles, libraries, stationery, literature and supplies, except in the case of title insurers such materials and plants as the insurer is expressly authorized to invest in under section 129 of this code and except, in the case of any insurer, such personal property as the insurer is permitted to hold pursuant to chapter 6 of this code, or which is acquired through foreclosure of chattel mortgages acquired pursuant to section 124 of this code, or which is reasonably necessary for the maintenance and operation of real estate lawfully acquired and held by the insurer other than real estate used by it for home office, branch office and similar purposes.

(5) The amount, if any, by which the aggregate book value of investments as carried in the ledger assets of the insurer exceeds the aggregate value thereof as determined under this code.

Section 85. **Liabilities, in general.** In any determination of the financial condition of an insurer, capital stock and liabilities to be charged against its assets shall include:

Liabilities to
determine
financial
condition
of insurer.

(1) The amount of its capital stock outstanding, if any.

(2) The amount, estimated consistent with the provisions of this code, necessary to pay all of its unpaid losses and claims incurred on or prior to the date of statement, whether reported or unreported, together with the expenses of adjustment or settlement thereof.

(3) With reference to life and disability insurance and annuity contracts:

(a) The amount of reserves on life insurance policies and annuity contracts in force, valued according to the tables of mortality, rates of interest, and methods adopted pursuant to this code which are applicable thereto.

(b) Reserves for disability benefits, for both active and disabled lives.

(c) Reserves for accidental death benefits.

(d) Any additional reserves which may be required by the commissioner consistent with practice formulated or approved by the national association of insurance commissioners, on account of such insurance.

(4) With reference to insurance other than specified in subsection (3) of this section, and other than title insurance, the amount of reserves equal to the unearned portions of the gross premiums charged on policies in force, computed in accordance with this chapter.

(5) Taxes, expenses and other obligations due or accrued at the date of the statement.

Insurer's duty to maintain unearned premium reserve.

Section 86. **Unearned premium reserve.** (1) As to insurance against loss or damage to property (except as provided in section 87), and as to all general casualty insurance and surety insurance, every insurer shall maintain an unearned premium reserve on all policies in force.

Computation.

(2) The commissioner may require that such reserves shall be equal to the unearned portions of the gross premiums in force after deducting applicable reinsurance in solvent insurers as computed on each respective risk from the policy's date of issue. If the commissioner does not so require, the portions of the gross premium in force, less applicable reinsurance in solvent insurers, to be held as an unearned premium reserve, shall be computed according to the following table:

Term for Which Policy Was Written	Reserve for Unearned Premium
1 year or less.....	$\frac{1}{2}$
2 years	1st year $\frac{3}{4}$
	2nd year $\frac{1}{4}$
3 years.....	1st year $\frac{5}{6}$
	2nd year $\frac{1}{2}$
	3rd year $\frac{1}{6}$
4 years	1st year $\frac{7}{8}$
	2nd year $\frac{5}{8}$
	3rd year $\frac{3}{8}$
	4th year $\frac{1}{8}$
5 years	1st year $\frac{9}{10}$
	2nd year $\frac{7}{10}$
	3rd year $\frac{1}{2}$

4th year $\frac{3}{10}$

5th year $\frac{1}{10}$

Over 5 years.....pro rata

(3) In lieu of computation according to the foregoing table, the insurer at its option may compute all of such reserves on a monthly or more frequent pro rata basis.

Option for computation.

(4) After adopting a method for computing such reserve, an insurer shall not change methods without approval of the commissioner.

Change of method.

(5) This section does not apply to title insurance.

Exception.

Section 87. **Unearned premium reserve for marine and transportation insurance.** As to marine and transportation insurance, the entire amount of premiums on trip risks not terminated shall be deemed unearned; and the commissioner may require the insurer to carry a reserve equal to one hundred percent (100%) of premiums on trip risks written during the month ended as of the date of statement.

Unearned premium reserve for marine and transportation insurance.

Section 88. **Reserve for disability insurance.** For all disability insurance policies the insurer shall maintain an active life reserve which shall place a sound value on its liabilities under such policies and be not less than the reserve according to appropriate standards set forth in regulations issued by the commissioner and, in no event, less in the aggregate than the pro rata gross unearned premiums for such policies.

Reserve for disability insurance.

Section 89. **Loss reserves, liability insurance and workmen's compensation.** Where required in the form of annual statement required of the insurer, the reserve for outstanding losses under insurance against loss or damage from accident to or injuries suffered by an employee or other person and for which the insured is liable, shall be computed as follows:

Less reserves—liability insurance and workmen's compensation.

(1) For all liability suits being defended under policies written more than:

Computation.

(a) Ten (10) years prior to the date as of which the statement is made, \$1,500 for each suit.

(b) Five (5) or more and less than ten (10) years

prior to the date as of which the statement is made, \$1,000 for each suit.

(c) Three (3) or more and less than five (5) years prior to the date as of which the statement is made, \$850 for each suit.

(2) For all liability policies written during the three (3) years immediately preceding the date as of which the statement is made, the reserve shall be sixty percent (60%) of the earned liability premiums of each of such three (3) years less all losses and expense payments made under liability policies written in the corresponding years; but in any event, such reserve shall for the first of such three (3) years be not less than \$750 for each outstanding liability suit on such year's policies.

(3) For all workmen's compensation claims under policies written more than three (3) years prior to the date as of which the statement is made, the reserve shall be the present value at four percent (4%) interest of the determined and the estimated future payments.

(4) For all workmen's compensation claims under policies written in the three (3) years immediately preceding the date as of which the statement is made, such reserve shall be sixty-five percent (65%) of the earned compensation premiums of each of such three years, less all loss and loss expense payments made in connection with such claims under policies written in the corresponding years. But in any event in the case of the first year of any such three-year period, such reserve shall be not less than the present value at four percent (4%) interest of the determined and the estimated unpaid compensation claims under policies written during such year.

Section 90. **Increase of inadequate reserves.** If loss experience shows that an insurer's loss reserves, however computed or estimated, are inadequate, the commissioner shall require the insurer to maintain loss reserves in such increased amount as is needed to make them adequate.

Section 91. **Title insurance reserves.** In addition to an adequate reserve as to outstanding losses as required under section 85, a title insurer shall maintain a guar-

anty fund or unearned premium reserve of not less than an amount computed as follows:

Computation.

(1) Ten percent (10%) of the total amount of the risk premiums written in the calendar year for title insurance contracts shall be assigned originally to the reserve.

(2) During each of the twenty (20) years next following the year in which the title insurance contract was issued, the reserve applicable to the contract may be reduced by five percent (5%) of the original amount of such reserve.

Section 92. **Standard valuation law—Life insurance.**

Standard valuation law—life insurance reserves.

(1) The commissioner shall annually value, or cause to be valued, the reserve liabilities (hereinafter called reserves) for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurer doing business in this state, and may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest and methods (net level premium method or other) used in the calculation of such reserves. In calculating such reserves, he may use group methods and approximate averages for fractions of a year or otherwise. In the case of an alien insurer, such valuation shall be limited to its insurance transactions in the United States. For the purpose of making such valuation the commissioner may employ a competent actuary who shall be paid by the insurer for which the service is rendered; but a domestic insurer may make such valuation and it may be received by the commissioner upon satisfactory proof of its correctness. In lieu of the valuation of the reserves herein required of any foreign or alien insurer, the commissioner may accept any valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when such valuation complies with the minimum standard herein provided and if the official of such state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the commissioner when such certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction.

Increase of inadequate reserves.

Title insurance reserves.

Any insurer which at any time shall have adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the commissioner, adopt any lower standard of valuation, but not lower than the minimum herein provided.

Exception
existing contracts.

(2) This subsection shall apply to only those policies and contracts issued prior to the operative date of section 325 (the standard nonforfeiture law).

Minimum
standard
of reserve
valuation.

The minimum standard of valuation on all policies of domestic life insurers issued prior to January 1, 1922, shall be the American experience table of mortality and interest at three and one-half percent ($3\frac{1}{2}\%$) per annum, with preliminary term insurance for the first policy year, and for policies of such insurers issued subsequent to December 31, 1921, shall be the American experience table of mortality with interest at three and one-half percent ($3\frac{1}{2}\%$) per annum, with preliminary term insurance for the first policy year, except as follows: If the premium charged for term insurance under a limited payment life preliminary term policy providing for the payment of all premiums thereon in less than twenty (20) years from the date of the policy, or under an endowment preliminary term policy, exceeds that charged for life insurance under twenty (20) payment life preliminary term policies of the same insurer, the reserve thereon at the end of any year, including the first, shall not be less than the reserve on a twenty (20) payment life preliminary term policy issued in the same year and at the same age, together with an amount which shall be equivalent to the accumulation of a net level premium reserve sufficient to provide for a pure endowment at the end of the premium payment period equal to the difference between the value at the end of such period of such a twenty (20) payment life preliminary term policy and the full net level premium reserve at such time of such a limited payment life or endowment policy.

Reserves for all such policies and contracts may be calculated, at the option of the insurer, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by this subsection.

(3) This subsection shall apply to only those policies and contracts issued on or after the operative date of section 325 (the standard nonforfeiture law).

(a) The minimum standard for the valuation of all such policies and contracts shall be the commissioner's reserve valuation method defined in subdivision (b), three and one-half percent ($3\frac{1}{2}\%$) interest, and the following tables:

Minimum
standard for
valuation
of policies
and contracts.

(i) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies,—the commissioners 1941 standard ordinary mortality table; except, that for any category of such policies issued on female risks, modified net premiums and present values, referred to in subdivision (b), may be calculated, at the option of the insurer with the approval of the commissioner, according to an age younger than the actual age of the insured.

(ii) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies,—the 1941 standard industrial mortality table.

(iii) For annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies,—the 1937 standard annuity mortality table.

(iv) For total and permanent disability benefits in or supplementary to ordinary policies or contracts—class (3) disability table (1926) which, for active lives, shall be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(v) For accidental death benefits in or supplementary to policies—the inter-company double indemnity mortality table combined with a mortality table permitted for calculating the reserves for life insurance policies.

(vi) For group life insurance, life insurance issued on the substandard basis and other special benefits—such tables as may be approved by the commissioner.

Computation of
reserves for
uniform policies.

(b) Reserves according to the commissioners reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of (A) over (B), as follows:

(A) A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due; provided, however, that such net level annual premium shall not exceed the net level annual premium on the nineteen year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such policy.

(B) A net one year term premium for such benefits provided for in the first policy year.

Computation of
reserves for
varying amount
policies.

Reserves according to the commissioners reserve valuation method for (i) life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums, (ii) annuity and pure endowment contracts, (iii) disability and accidental death benefits in all policies and contracts, and (iv) all other benefits, except life insurance and endowment benefits in life insurance policies, shall be calculated by a method consistent with the principles of this subdivision (b).

Minimum
aggregate
reserves.

(c) In no event shall an insurer's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, be less than the aggregate reserves calculated in accordance with the method set forth in subdivision (b) and the mortality table or tables and

rate or rates of interest used in calculating nonforfeiture benefits for such policies.

(d) Reserves for any category of policies, contracts or benefits as established by the commissioner, may be calculated at the option of the insurer according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for therein. Provided, however, that reserves for participating life insurance policies may, with the consent of the commissioner, be calculated according to a rate of interest lower than the rate of interest used in calculating the nonforfeiture benefits in such policies, with the further proviso that if such lower rate differs from the rate used in the calculation of the nonforfeiture benefits by more than one-half percent ($\frac{1}{2}\%$) the insurer issuing such policies shall file with the commissioner a plan providing for such equitable increases, if any, in the cash surrender values and nonforfeiture benefits in such policies as the commissioner shall approve.

Option to adopt
method creating
greater
aggregate
reserves.

(e) Deficiency reserves. If the gross premium charged by any life insurer on any policy or contract is less than the net premium for the policy or contract according to the mortality table, rate of interest and method used in calculating the reserve thereon, there shall be maintained on such policy or contract a deficiency reserve in addition to all other reserves required by law. For each such policy or contract the deficiency reserve shall be the present value, according to such standard, of an annuity of the difference between such net premium and the premium charged for such policy or contract, running for the remainder of the premium-paying period.

Deficiency
reserves.

Computation.

Section 93. **Deposit of reserves, domestic life insurers.**
(1) Domestic life insurers shall deposit and maintain on deposit, in securities and assets, with depositories and subject to conditions as provided for in chapter 7 of this code, an amount not less than the reserves on its outstanding life insurance policies, and annuity contracts, as valued under section 92.

Deposit of
reserves—
domestic life
insurers.

Amount.

Annual deposit
of additional
securities.

(2) Annually on or before April 1, the insurer shall so deposit any additional such securities required under subsection (1) and related to the increase of such reserves during the calendar year next preceding, as determined from the insurer's annual statement as at December 31 of such preceding year.

Credit of domestic
stock life insurer.

(3) A domestic stock life insurer may credit toward such deposit the amount of any other deposit of the insurer held under chapter 7 for the protection of its policyholders or of its policyholders and creditors.

Deposits shall
consist of
qualified
securities
and assets.
Exceptions.

(4) Deposits of the reserves of a domestic life insurer under this section shall consist of securities and assets acquired in accordance with chapter 6 of this code except as follows:

(a) Common stocks acquired under section 113 and investment trust securities acquired under section 117 shall be eligible for deposit only to the extent of fifty percent of the value at which they are carried in the last financial statement on file with the commissioner or their cost if acquired since the date of the last statement on file.

(b) Securities acquired under section 122 (miscellaneous investments) shall not be eligible for deposit.

(c) Only real estate acquired under section 125 (1) shall be eligible for deposit, and in no case shall the value of such real estate for deposit purposes exceed the original cost.

Loan as part
of deposit.

(5) Real estate mortgage loans, chattel mortgage loans and policy loans may be made a part of the deposit by filing a verified statement of the loans with the commissioner, which statement shall be subject to audit at all times by the commissioner. Nonnegotiable securities where deposited with the commissioner shall be accompanied by transfer powers in due form. If the insurer uses the home office real estate under section 125 (1) as a deposit, a deed of trust to the commissioner shall be completed in due form and recorded prior to being deposited with the commissioner.

Non-negotiable
securities.

Deed of trust.

In event
of default.

(6) If default occurs in the payment of interest or principal of any deposited security and such default con-

tinues for a period of one hundred twenty (120) days, the commissioner may declare such security no longer eligible for deposit under this section.

Section 94. **Valuation of bonds.** (1) All bonds or other evidences of debt having a fixed term and rate of interest held by an insurer may, if amply secured and not in default as to principal or interest, be valued as follows:

Valuation
of bonds.

(a) If purchased at par, at the par value.

(b) If purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield in the meantime the effective rate of interest at which the purchase was made, or in lieu of such method, according to such accepted method of valuation as is approved by the commissioner.

(c) Purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase, plus actual brokerage, transfer, postage or express charges paid in the acquisition of such securities.

(d) Unless otherwise provided by valuation established or approved by the commissioner, no such security shall be carried at above the call price for the entire issue during any period within which the security may be so called.

(2) The commissioner shall have full discretion in determining the method of calculating values according to the rules set forth in this section.

Section 95. **Valuation of other securities.** (1) Securities, other than those referred to in section 94, held by an insurer, shall be valued, in the discretion of the commissioner, at their market value, or at their appraised value, or at prices determined by him as representing their fair market value.

Valuation of
other securities.

(2) Preferred or guaranteed stocks or shares while paying full dividends may be carried at a fixed value in lieu of market value, at the discretion of the commissioner and in accordance with such method of computation as he may approve.

Valuation of
property—
real and personal.

Section 96. **Valuation of property.** (1) Real property acquired pursuant to a mortgage loan or contract for sale, in the absence of a recent appraisal deemed by the commissioner to be reliable, shall not be valued at an amount greater than the unpaid principal of the defaulted loan or contract at the date of such acquisition, together with any taxes and expenses paid or incurred in connection with such acquisition, and the cost of improvements thereafter made by the insurer and any amounts thereafter paid by the insurer on assessments levied for improvements in connection with the property.

(2) Other real property held by an insurer shall not be valued at an amount in excess of fair value as determined by recent appraisal. If valuation is based on an appraisal more than three years old, the commissioner may at his discretion call for and require a new appraisal in order to determine fair value.

(3) Personal property acquired pursuant to chattel mortgages made in accordance with section 124 shall not be valued at an amount greater than the unpaid balance of principal on the defaulted loan at the date of acquisition, together with taxes and expenses incurred in connection with such acquisition, or the fair value of such property, whichever amount is the lesser.

Valuation of
purchase money
mortgages.

Section 97. **Valuation of purchase money mortgages.** Purchase money mortgages on real property referred to in subsection (1) of section 96 of this chapter shall be valued in an amount not exceeding the acquisition cost of the real property covered thereby or ninety percent (90%) of the fair value of such real property, whichever is less.

Investments.

CHAPTER 6 — INVESTMENTS

Section 98. **Scope of chapter.** Except as to section 131, this chapter shall apply to domestic insurers only.

Eligible
investments.

Section 99. **Eligible investments.** (1) Insurers shall invest in or lend their funds on the security of, and shall hold as invested assets, only eligible investments as prescribed in this chapter.

Existing
investments.

(2) Any particular investment held by an insurer on the effective date of this code, and which was a legal

investment at the time it was made, and which the insurer was legally entitled to possess immediately prior to such effective date, shall be deemed to be an eligible investment.

(3) Eligibility of an investment shall be determined as of the date of its making or acquisition, except as stated in subsection (2) above.

(4) Any investment limitation based upon the amount of the insurer's assets or particular funds shall relate to such assets or funds as shown by the insurer's annual statement as of the December 31 next preceding date of acquisition of the investment by the insurer, or as shown by a current financial statement filed with the commissioner.

Section 100. **General qualifications.** (1) No security or investment (other than real and personal property acquired under section 125 (real estate) of this chapter) shall be eligible for acquisition unless it is interest bearing or interest accruing or dividend or income paying, if not then in default in any respect, and the insurer is entitled to receive for its exclusive account and benefit the interest or income accruing thereon.

General
qualifications
of investments.

(2) No security or investment shall be eligible for purchase at a price above its market value.

(3) No provision of this chapter shall prohibit the acquisition by an insurer of other or additional securities or property if received as a dividend or as a lawful distribution of assets, or under a lawful and bona fide agreement of bulk reinsurance, merger, or consolidation. Any investment so acquired which is not otherwise eligible under this chapter shall be disposed of pursuant to section 127 if personal property or securities, or pursuant to section 126 if real property.

Section 101. **Authorization of investment.** An insurer shall not make any investment or loan (other than policy loans or annuity contract loans of a life insurer) unless the same is authorized or approved by the insurer's board of directors or by a committee authorized by such board and charged with the supervision or making of such investment or loan. The minutes of any such committee

Authorization
of investment.

shall be recorded and regular reports of such committee shall be submitted to the board of directors.

Limitations on
diversification
of investments.

Section 102. **Diversification of investments.** An insurer shall invest in or hold as admitted assets categories of investments only within applicable limits as follows:

One person.

(1) One person. An insurer shall not, except with the consent of the commissioner, have at any one time any combination of investments in or loans upon the security of the obligations, property, or securities of any one person, or insurer, aggregating an amount exceeding five percent of the insurer's assets. This restriction shall not apply as to general obligations of the United States of America or of any state or include policy loans made under section 118.

Voting stock.

(2) Voting stock. An insurer shall not invest in or hold at any one time more than ten percent of the outstanding voting stock of any corporation, except with the consent of the commissioner given with respect to voting rights of preference stock during default of dividends. This provision does not apply as to stock of a wholly-owned subsidiary of the insurer or to controlling stock of an insurer acquired under section 114.

Minimum capital.

(3) Minimum capital. An insurer (other than title insurer) shall invest and maintain invested funds not less in amount than the minimum paid-in capital stock required under this code of a domestic stock insurer transacting like kinds of insurance, only in cash and the securities provided for under the following sections of this chapter: Section 103 (U. S. or Canadian government obligations), section 105 (state, county, municipal, etc., obligations), and section 123 (real estate mortgages).

Life insurance
reserves.

(4) Life insurance reserves. A life insurer shall also invest and keep invested its funds in amount not less than the reserves under its life insurance policies and annuity contracts (other than variable annuities) in force, in cash and/or the securities or investments provided for under section 93.

Corporate
obligations.

(5) Corporate obligations. Except with the commissioner's consent, an insurer shall not have invested at any one time more than twenty percent of its assets in the class of securities described in section 111 (corporate

bonds and debentures), exclusive of obligations of public utilities.

(6) Common stocks. An insurer may invest and have invested at any one time in aggregate amount not more than ten percent of its assets in all stocks under sections: 113 (common stocks), 114 (insurance stocks), and 117 (investment trust certificates). Determination of the amount which an insurer has invested in common stocks for the purposes of this provision shall be based on the cost of such stocks to the insurer. This provision shall not apply as to stock of a controlled or subsidiary insurance corporation or other corporations under sections 114 and 115.

Common stocks.

(7) Miscellaneous. Except with the commissioner's consent, an insurer shall not have invested at any one time more than ten percent of its assets in the class of securities described in any one of the following sections: Sections 107 (improvement district obligations), 112 (preferred or guaranteed stock), and 116 (equipment trust certificates).

Miscellaneous.

(8) Other specific limits. Limits as to investments in the category of real estate shall be as provided in section 125; and other specific limits shall apply as stated in the sections dealing with other respective kinds of investments.

Other
specific limits.

Section 103. **United States or Canadian government obligations.** An insurer may invest in bonds, notes, warrants and other evidences of indebtedness which are direct obligations of the United States of America or of Canada or for which the full faith and credit of the United States of America or of Canada is pledged for the payment of principal and interest.

United States
and Canadian
government
obligations.

Section 104. **Loans guaranteed by the United States or Canada.** An insurer may invest in loans guaranteed as to principal and interest by the United States of America or Canada, or by any agency or instrumentality of the United States of America or Canada.

Loans guaranteed
by United States
or Canada.

Section 105. **State, county, municipal, and school obligations.** An insurer may invest any of its funds in bonds or other evidences of indebtedness which are general obligations of, or are secured by pledge of specific

State, county,
municipal, school,
obligations.

revenues by, this state or of any other state of the United States or province of Canada, or of any of the counties or incorporated cities or towns, or duly organized school districts, or other taxing districts of such states or provinces.

Revenue bonds.

Section 106. **Revenue bonds.** An insurer may invest in bonds, notes or evidences of indebtedness of any state of the United States or province of Canada or any political subdivision thereof or any agency or instrumentality of any of the foregoing, which are payable from revenues or earnings specifically pledged for the payment of the principal and interest on such obligations, and for the payment of which a lawful sinking fund or reserve fund has been established and is being maintained.

Improvement district obligations.

Section 107. **Improvement district obligations.** An insurer may invest in bonds, notes or evidences of indebtedness issued by any local improvement district in this or any other state to finance local improvements authorized by law, if the principal and interest of such obligations is payable from assessments on real property within such local improvement district. No such investment shall be made if the face value of all such obligations, together with all similar obligations of such improvement district outstanding, exceed fifty percent (50%) of the market value of the real property and improvements upon which such bonds or the assessments for the payment of principal and interest thereon are liens inferior only to the liens for general ad valorem property taxes.

Irrigation district obligations.

Section 108. **Irrigation district obligations.** An insurer may invest in the bonds, notes or evidences of indebtedness of any irrigation district organized under the laws of Montana.

Federal agency obligations and stock.

Section 109. **Obligations, stock of certain federal agencies.** An insurer may invest in the obligations, and/or stock where stated, of the following agencies of the government of the United States of America, whether or not such obligations are guaranteed by such government:

- (1) Commodity credit corporation.
- (2) Federal intermediate credit banks.

- (3) Federal land banks.
- (4) Central bank for cooperatives.
- (5) Federal home loan banks, and stock thereof.
- (6) Federal national mortgage association, and stock thereof when acquired in connection with sale of mortgage loans to such association.
- (7) Any other similar agency of the government of the United States of America and of similar financial quality.

Section 110. **International bank.** An insurer may invest in obligations issued, assumed or guaranteed by the international bank for reconstruction and development.

International bank.

Section 111. **Corporate bonds and debentures.** (1) An insurer may invest in bonds, debentures, notes and other evidences of indebtedness issued, assumed or guaranteed by any solvent institution existing under the laws of the United States of America or of Canada, or any state or province thereof, which are not in default as to principal or interest and which are secured by adequate collateral and bear fixed interest and if during each of any three, including either the last two, of the five fiscal years next preceding the date of acquisition by the insurer, the net earnings of the issuing, assuming or guaranteeing institution available for its fixed charges, as hereinafter defined, shall have been not less than one and one-quarter times the total of its fixed charges for such year. In determining the adequacy of collateral security, not more than one-third of the total value of such required collateral shall consist of common stock.

Corporate bonds and debentures.

(2) An insurer may invest in secured and unsecured obligations of such institutions (other than obligations described in subsection (1) bearing interest at a fixed rate, with mandatory principal and interest due at specified times, if the net earnings of the issuing, assuming or guaranteeing institution available for its fixed charges for a period of five (5) fiscal years next preceding the date of acquisition by such insurer have averaged per year not less than one-and-one-half times its average annual fixed charges applicable to such period and if during either of the last two (2) years of such period such

Interest bearing corporate obligations.

net earnings have been not less than one and one-half times its fixed charges for such year.

Corporate
adjustment,
income and
contingent
interest
obligations.

(3) An insurer may invest in adjustment, income, or other contingent interest obligations of such institutions if the net earnings of the issuing, assuming or guaranteeing institution available for its fixed charges for a period of five fiscal years next preceding the date of acquisition by the insurer shall have averaged per year not less than one and one-half times the sum of its average annual fixed charges and its average annual maximum contingent interest applicable to such period and if during either of the last two years of such period such net earnings shall have been not less than one and one-half times the sum of its fixed charges and maximum contingent interest for such year.

"Net earnings
available for
fixed charges"
defined.

(4) Within the meaning of this section, the term "net earnings available for fixed charges" means net income after deducting operating and maintenance expenses, taxes other than federal income taxes, depreciation and depletion, but excluding extraordinary non-recurring items of income or expense appearing in the regular financial statements of the issuing, assuming or guaranteeing institutions. The term "fixed charges" shall include interest on funded and unfunded debt, amortization of debt discount, and rentals for leased properties.

"Fixed charges"
defined.

Preferred or
guaranteed
stock.

Section 112. **Preferred or guaranteed stock.** An insurer may invest in preferred or guaranteed stocks or shares of any solvent institution existing under the laws of the United States of America or of Canada, or of any state or province thereof, if all of the prior obligations and prior preferred stocks, if any, of such institution at the date of acquisition of the investment by such insurer are eligible as investments under this chapter and if the net earnings of such institution available for its fixed charges during each of the last two (2) years have been, and during each of the last five (5) years have averaged, not less than one and one-half times the sum of its average annual fixed charges, if any, its average annual maximum contingent interest, if any, and its average annual preferred dividend requirements. For the purposes of this section such computation shall refer to the fiscal

years immediately preceding the date of acquisition of the investment by the insurer, and the term "preferred dividend requirement" shall be deemed to mean cumulative or noncumulative dividends, whether paid or not.

Section 113. **Common stocks.** An insurer may invest in nonassessable common stocks, other than insurance stocks, of any solvent corporation existing under the laws of the United States of America or of Canada, or any state or province thereof, if cash or stock dividends have been earned and paid on its common stock in each of the five fiscal years preceding such acquisition; and if, further, all prior obligations or preference stock of such corporation, if any, are eligible for investment under this chapter. If the issuing corporation has not been in legal existence for the whole of the five preceding fiscal years but was formed as a consolidation or merger of two or more businesses, the test of eligibility for investment of its common stock under this section shall be based upon consolidation pro-forma statements of the predecessor or constituent institutions.

Common stocks.

Section 114. **Insurance stocks.** (1) An insurer may invest in the stocks of other solvent insurers formed under the laws of this or another state, which stocks meet the applicable requirements of sections 112 (preferred or guaranteed stock) and 113 (common stocks).

Insurance stocks.

(2) With the commissioner's consent an insurer may acquire and hold the controlling interest in the outstanding voting stock of another stock insurer formed under the laws of this or another state. All stocks under this subsection shall be subject to the limitation as to amount as provided in section 115.

Controlling
interest.

Section 115. **Stocks of subsidiaries.** With the commissioner's consent an insurer may invest in the stock of its wholly-owned subsidiary insurance corporation; or in the stock of its wholly-owned subsidiary business corporation formed under the laws of this state and necessary and incidental to the convenient operation of the insurer's insurance business or to the administration of any of its investments. All of the insurer's investments under this section, together with its investments in insurance stocks under section 114 (2), shall not at any time exceed the amount of the investing insurer's surplus,

Stocks of
subsidiaries.

if a life insurer, or its surplus to policyholders if other than a life insurer.

Equipment trust certificates.

Section 116. **Equipment trust certificates.** An insurer may invest in equipment trust obligations or certificates adequately secured and evidencing an interest in transportation equipment, wholly or in part within the United States of America, which obligations or certificates carry the right to receive determined portions of rental, purchase, or other fixed obligatory payments to be made for the use or purchase of such transportation equipment.

Investment trust securities.

Section 117. **Investment trust securities.** An insurer may invest in the securities of any management type investment company or investment trust registered with the Federal Securities and Exchange Commission under the Investment Company Act of 1940 as from time to time amended, if such investment company or trust has assets not less than fifty million dollars (\$50,000,000) as at date of investment by the insurer.

Policy loans.

Section 118. **Policy loans.** A life insurer may lend to its policyholder upon pledge of the policy as collateral security, any sum not exceeding the cash surrender value of the policy; or may lend against pledge or assignment of any of its supplementary contracts or other contracts or obligations, so long as the loan is adequately secured by such pledge or assignment. Loans so made are eligible investments of the insurer.

Collateral loans.

Section 119. **Collateral loans.** An insurer may lend and thereby invest its funds upon the pledge of securities eligible for investment under this chapter. As at date made, no such loan shall exceed in amount seventy-five percent (75%) of the market value of such collateral pledged. The amount so loaned shall be included pro rata in determining the maximum percentage of funds permitted under this chapter to be invested in the respective categories of securities so pledged.

Savings and loan associations.

Section 120. **Savings and loan.** To the extent that such an account is insured by the Federal Savings and Loan Insurance Corporation, an insurer may invest in share or savings accounts of savings and loan and building and loan associations.

Foreign securities.

Section 121. **Foreign securities.** An insurer author-

ized to transact insurance in a foreign country may make investments, in aggregate amount not exceeding its deposit and obligations incurred in such country, in securities of or in such country possessing characteristics and of a quality similar to like investments required pursuant to this chapter for investments in the United States of America. Canadian securities eligible for investment under other provisions of this chapter are not subject to this section.

Section 122. **Miscellaneous investments.** (1) An insurer may make loans or investments not otherwise expressly permitted under this chapter, in aggregate amount not over five percent of the insurer's assets and not over one percent of such assets as to any one such loan or investment, if such loan or investment fulfills the requirements of section 100 and otherwise qualifies as a sound investment. But no such loan or investment shall be represented by:

Miscellaneous investments.

(a) Any item described in section 84 (assets not allowed) of this code, or any loan or investment otherwise expressly prohibited.

(b) Agents' balances, or amounts advanced to or owing by agents or former agents of the insurer, whether or not secured; except as to policy loans, mortgage loans, and collateral loans otherwise authorized under this chapter.

(c) Any category of loans or investments eligible under any other provisions of this chapter.

(d) Any asset theretofore acquired or held by the insurer under any other category of loans or investments eligible under this chapter.

(2) The insurer shall keep a separate record of all loans and investments made under this section.

Section 123. **Real estate mortgages.** (1) An insurer may invest any of its funds in bonds, notes or other evidences of indebtedness which are secured by first mortgages or deeds of trust upon improved real property located in the United States or Canada, or which are secured by first mortgages or deeds of trust upon leasehold estates having an unexpired term of not less than

Real estate mortgages.

twenty-one (21) years (inclusive of the term or terms which may be provided by enforceable options of renewal) in improved real property located in the United States or Canada. In all cases the security for the loan must be a first lien upon such real property, and there must not be any condition or right of re-entry or forfeiture not insured against, under which, in the case of real property other than leaseholds, such lien can be cut off or subordinated or otherwise disturbed or under which, in the case of leaseholds, the insurer is unable to continue the lease in force for the duration of the loan. Nothing herein shall prohibit any investment by reason of the existence of any prior lien for ground rents, taxes, assessments or other similar charges not yet delinquent. This section shall not be deemed to prohibit investment in mortgages or similar obligations when made under section 121 (foreign securities).

(2) "Improved real estate" means all farm lands used for tillage, crop, or pasture, timberlands, and all real estate on which permanent improvements suitable for residence, institutional, commercial or industrial use are situated.

(3) No such mortgage loan or loans made or acquired by an insurer on any one property shall, at the time of investment by the insurer, exceed the larger of the following amounts as applicable:

(a) Two-thirds of the value of the real property or leasehold securing the same; or

(b) The amount of any insurance or guaranty of such loan by the United States of America or by any agency or instrumentality thereof; or

(c) Two-thirds of the value of the real property or leasehold securing the same, plus the amount by which the excess of such loan over such two-thirds is insured or guaranteed by the United States of America or by any agency or instrumentality thereof.

Except, that in the case of a purchase money mortgage given to secure the purchase price of real estate sold by the insurer, the amount so loaned or invested shall not exceed the unpaid portion of the purchase price.

(4) No such mortgage loan or loans shall be made or acquired by an insurer except after an appraisal made by a qualified appraiser for the purpose of such investment.

(5) No such mortgage loan made or acquired by an insurer which is a participation or a part of a series or issue secured by the same mortgage or deed of trust shall be a lawful investment under this section unless the entire series or issue which is secured by the same mortgage or deed of trust is held by such insurer, or unless the insurer holds a senior participation in such mortgage or deed of trust, giving it substantially the rights of a first mortgagee.

(6) No mortgage loan upon a leasehold shall be made or acquired pursuant to this section unless the terms thereof shall provide for amortization payments to be made by the borrower on the principal thereof at least once in each year in amounts sufficient completely to amortize the loan within a period of four-fifths of the term of the leasehold, inclusive of the term which may be provided by an enforceable option of renewal, which is unexpired at the time the loan is made, but in no event exceeding thirty-five (35) years.

Section 124. **Chattel mortgages.** (1) In connection with a mortgage loan on the security of real estate designed and used primarily for residential purposes only, which mortgage loan was acquired pursuant to section 123 of this chapter, an insurer may lend or invest an amount not exceeding twenty percent (20%) of the amount loaned on or invested in such real estate mortgage on the security of a chattel mortgage to be amortized by regular periodic payments within a term of not more than five (5) years, and representing a first and prior lien, except for taxes not then delinquent, on personal property constituting durable equipment owned by the mortgagor and kept and used in the mortgaged premises.

(2) For the purposes of this section, the term "durable equipment" shall include only mechanical refrigerators, air conditioning equipment, mechanical laundering machines, heating and cooking stoves and ranges, and,

in addition, in the case of apartment houses, motels and hotels, room furniture and furnishings.

(3) Prior to the acquisition of a chattel mortgage hereunder, items of property to be included therein shall be separately appraised by a qualified appraiser and the fair market value thereof determined. No such chattel mortgage loan shall exceed in amount the same ratio of loan to the value of the property as is applicable to the companion loan on the real property.

(4) This section shall not prohibit an insurer from taking liens on personal property as additional security for any investment otherwise eligible under this chapter.

Real estate.

Section 125. Real estate. An insurer may invest in real estate only if used for the purposes or acquired in the manners, and within the limits as follows:

(1) The land and the buildings thereon in which it has its principal office, and such other real estate as shall be requisite for its convenient accommodation in the transaction of its business. Except with the consent of the commissioner, all such investments shall not aggregate more than five percent (5%) of the insurer's assets.

(2) Real estate acquired in satisfaction of loans, mortgages, liens, judgments, decrees or debts previously owing to the insurer in the course of its business.

(3) Real estate acquired in part payment of the consideration on the sale of other real estate owned by it, if such transaction does not increase the insurer's investment in real estate.

(4) Real estate acquired by gift or devise, or through merger, consolidation, or bulk reinsurance of another insurer under this code.

(5) The seller's interest in real property subject to an agreement of purchase or sale, but the sum invested in any such parcel of real estate shall not exceed two-thirds of the market value of such parcel.

(6) Real estate, or any interest therein acquired or held by purchase, lease or otherwise, other than real estate to be used primarily for agricultural, ranch, min-

ing, development of oil or mineral resources, recreational, amusement or club purposes, acquired as an investment for the production of income, or acquired to be improved or developed for such investment purposes pursuant to an existing program therefor. The insurer may hold, improve, develop, maintain, manage, lease, sell, and convey real estate acquired by it under this provision. An insurer shall not, except with the commissioner's consent, have at any one time invested in real estate under this subdivision an amount exceeding five percent (5%) of its assets.

(7) Additional real estate and equipment incident to real estate, if necessary or convenient for the purpose of enhancing the sale or other value of real estate previously acquired or held by the insurer under subdivisions (2), (3), (4), or (6) of this section. Such real estate and equipment shall be included, together with the real estate for the enhancement of which it was acquired, for the purpose of applicable investment limits, and shall be subject to disposal at the same time and under the same conditions as applying to such enhanced real estate under section 126.

(8) Except with the commissioner's consent, all real estate owned by the insurer under this section, except as to seller's interest specified in subdivision (5), shall not at any one time exceed ten percent (10%) of the insurer's assets.

Section 126. Time limit for disposal of real estate.

**Time limit—
disposal of
real estate.**

(1) Except as stated in subsection (3) of this section, the insurer shall dispose of real estate acquired under subdivision (1) of section 125 within five (5) years after it has ceased to be necessary for the convenient accommodation of the insurer in the transaction of its business.

(2) Except as stated in subsection (3) of this section, the insurer shall dispose of real estate acquired under subdivisions (2), (3), and (4) of section 125 within five (5) years after the date of acquisition.

(3) Upon proof satisfactory to him that the interests of the insurer will suffer materially by the forced sale thereof, the commissioner may by order grant a reasonable extension of the period, as specified in such order,

within which the insurer shall dispose of any particular parcel of such real estate; unless the insurer elects to hold such real estate as an investment for income purposes under subdivision (6) of section 125, in which event thereafter such real estate shall be deemed to have been acquired at a cost equal to its book value at the time of such election and to be held under, and subject to, the provisions of such subdivision (6).

Time limit—
disposal of
other ineligible
property and
securities.

Section 127. Time limit for disposal of other ineligible property and securities. Any personal property or securities lawfully acquired by an insurer which it could not otherwise have invested in or loaned its funds upon at the time of such acquisition, shall be disposed of within three (3) years from date of acquisition unless within such period the security has attained to the standard of eligibility; except, that any security or personal property acquired under any agreement of bulk reinsurance, merger, or consolidation, may be retained for a longer period if so provided in the plan for such reinsurance, merger, or consolidation as approved by the commissioner under chapter 22 of this code. Upon application by the insurer and proof that forced sale of any such property or security would materially injure the interests of the insurer, the commissioner may extend the disposal period for an additional reasonable time.

Effect, penalty,
for failure to
dispose within
time limit.

Section 128. Failure to dispose of real estate, property, or securities—Effect, penalty. (1) Any real estate, personal property, or securities lawfully acquired and held by an insurer after expiration of the period for disposal thereof or any extension of such period granted by the commissioner, as provided in sections 126 or 127, shall not be allowed as an asset of the insurer.

(2) The insurer shall forthwith dispose of any ineligible investment unlawfully acquired by it, and the commissioner may, in his discretion, suspend or revoke the insurer's certificate of authority if the insurer fails to dispose of the investment within such reasonable time as the commissioner may, by his order, specify.

Special
investments
by title insurer.

Section 129. Special investments by title insurer. (1) In addition to other investments eligible under this chapter, a title insurer may invest and have invested an amount not exceeding fifty percent (50%) of its paid-

in capital stock in its abstract plant and equipment, and, with the commissioner's consent, in stock of abstract companies. If the insurer transacts kinds of insurance in addition to title insurance, for the purposes of this section its paid-in capital stock shall be pro rated between title insurance and such other insurances upon the basis of the reserves maintained by the insurer for the various kinds of insurance; but the capital so assigned to title insurance shall in no event be less than one hundred thousand dollars (\$100,000).

(2) Investments authorized by this section shall not be credited against the insurer's required unearned premium or guaranty fund reserve provided for under section 91.

(3) Any such abstract plant and equipment shall not be so allowed as an asset in any determination of the insurer's financial condition at a value greater than actual cost.

Section 130. Prohibited investments and investment underwriting. (1) In addition to investments excluded pursuant to other provisions of this code, an insurer shall not invest in or lend its funds upon the security of:

Prohibited
investments
and investment
underwriting.

(a) Issued shares of its own capital stock, except for the purpose of mutualization under section 460.

(b) Except with the advance consent of the commissioner, securities issued by any corporation or enterprise the controlling interest of which is, or after such acquisition by the insurer will be held directly or indirectly by the insurer or any combination of the insurer and the insurer's directors, officers, parent corporation, subsidiaries or controlling stockholders. Investments in subsidiaries under section 115 shall not be subject to this provision.

(c) Any note or other evidence of indebtedness of any director, officer, or controlling stockholders of the insurer, except as to policy loans authorized under section 118.

(2) No insurer shall underwrite or participate in the

underwriting of an offering of securities or property by any other person.

Investments of
foreign insurers.

Section 131. **Investments of foreign insurers.** The investment port-folio of a foreign insurer shall be as permitted by the laws of its domicile but shall be of a quality substantially as high as that required under this chapter for similar funds of like domestic insurers. For the purposes of this provision, the domicile of an alien insurer, other than a life insurer formed under the laws of Canada, shall be deemed to be that state in which it maintains its principal deposit.

CHAPTER 7 — ADMINISTRATION OF DEPOSITS

Authorized
deposits
of insurers.

Section 132. **Authorized deposits of insurers.** The following deposits of insurers when made through the commissioner shall be accepted and held, and shall be subject to the provisions of this chapter.

(1) Deposits required under this code for authority to transact insurance in this state.

(2) Deposits of domestic insurers when made pursuant to the laws of other states, provinces, and countries as requirement for authority to transact insurance in such state, province, or country.

(3) Deposits of reserves made by domestic life insurers under section 93.

(4) Deposits in such additional amounts as are permitted to be made under section 141.

Purposes
of deposits.

Section 133. **Purpose of deposit.** Such deposits shall be held for purposes as follows:

(1) Deposits made in this state under section 54 of this code shall be held for the purpose stated in such section.

(2) A deposit made in this state by a domestic insurer transacting insurance in another state, province, or country, and as required by the laws of such other state, province, or country, shall be held for the protection of all the insurer's policyholders or all its policyholders and creditors or for such other purpose or purposes as may be specified pursuant to such laws.

(3) Deposits of reserves made by domestic life insurers under section 93 shall be held for the common benefit of all the holders of its life insurance policies and annuity contracts.

(4) Deposits required pursuant to the retaliatory law, section 71, shall be held for such purposes as is required by such law, and as specified by the commissioner's order requiring such deposit to be made.

Section 134. **Securities eligible for deposit.** (1) All such deposits required under section 54 for authority to transact insurance in this state shall consist of certificates of deposit, or any combination of securities of the kinds described in the following sections of this code: Sections 103 (United States and Canadian government obligations), 105 (state, county, municipal, and school obligations), and 106 (revenue bonds).

Securities eligible
for deposit.

(2) All other deposits of a domestic insurer held in this state pursuant to the laws of another state, province, or country shall be comprised of assets of the kinds described in subsection (1), above, and of such additional kind or kinds of securities required or permitted by the laws of such state, province, or country except common stocks, mortgages of any kind and real estate.

(3) Deposits of the reserves of a domestic life insurer shall consist of securities and assets as provided under section 93.

(4) Deposits of foreign insurers made in this state under the retaliatory law, section 71, shall consist of such assets as are required by the commissioner pursuant to such law.

Section 135. **Depositary or custodian.** (1) Deposits made in this state under this code shall be made through the office of the commissioner in safe deposit or under custodial arrangements as required or approved by the commissioner consistent with the purposes of such deposit, with an established safe deposit institution, bank, or trust company located in the City of Helena, State of Montana, selected by the insurer with the commissioner's approval.

Authorized
depositories
or custodians.

(2) No safe deposit shall be used for any such deposit

unless the box or compartment in which are kept the assets and securities comprising the deposit requires two separate and distinctly differing keys or one key and a combination (in the case of a box having a combination lock) to open the same. One of such keys or the combination shall at all times be kept by the commissioner, and the other key or the combination shall at all times be kept by the insurer. Such box or compartment shall not at any time be opened or remain open except through the joint action and in the presence of both the commissioner and a duly authorized officer or representative of the insurer.

(3) Where of convenience to the insurer in the buying, selling, and exchange of securities comprising its deposit, and in the collection of interest and other income currently accruing thereon, the insurer may with the commissioner's written approval in advance, deposit certain of such securities under custodial arrangements with an established bank or trust company located outside this state, so long as receipts representing all such securities are issued by such custodian bank or trust company and are held in safe deposit or custody subject to the requirements of subsections (1) and (2) of this section.

(4) The form and terms of all such depositary or custodial agreements shall be as prescribed or approved by the commissioner consistent with the applicable provisions of this code.

(5) The compensation and expenses of the depositary or custodian shall be borne by the insurer.

Section 136. **Record of deposits; liability of commissioner and state.** (1) The commissioner shall give to the depositing insurer vouchers as to all assets and securities deposited by it in this state through the commissioner as provided in this code.

(2) The commissioner shall keep a record of the assets and securities comprising each deposit, showing as far as practical the amount and market value of each item, and all his transactions relative thereto.

Section 137. **Responsibility for safekeeping.** The commissioner and the State of Montana shall have no

Record
of deposits—
duties of
commissioner.

Non-liability of
commissioner
and state for
safekeeping.

liability as to the safekeeping of any such deposit by the depositary or custodian thereof.

Section 138. **Assignment, conveyance of assets or securities.** All securities not negotiable by delivery and deposited under this code shall be duly assigned to the commissioner and his successors in office. In the case of securities held under custodial arrangements outside this state pursuant to section 135 (3), the custodian's receipt for such securities shall be so delivered, if negotiable, or assigned to the commissioner if thereby legal title to such securities is vested in the commissioner. All other assets so deposited the insurer shall transfer or convey to the commissioner and his successors in office. Upon release to the insurer of any such asset or security the commissioner shall reassign or transfer or reconvey the same to the insurer.

Assignment,
conveyance
of assets or
securities.

Section 139. **Appraisal.** The commissioner may, in his discretion, prior to acceptance for deposit of any particular asset or security, or at any time thereafter while so deposited, have the same appraised or valued by competent appraisers. The reasonable costs of any such appraisal or valuation shall be borne by the insurer.

Appraisal prior
to deposits.

Section 140. **Rights of insurer during solvency.** So long as the insurer remains solvent and is in compliance with this code it may:

Rights of insurer
during solvency.

(1) Demand, receive, sue for and recover the income from the assets or securities deposited;

(2) Exchange and substitute for the deposited assets or securities, or any part thereof, other eligible assets or securities of equivalent or greater value; and

(3) At any reasonable time inspect any such deposit.

Section 141. **Excess deposits.** An insurer may so deposit and have on deposit assets or securities in an amount exceeding its deposit required or otherwise permitted under this code by not more than twenty percent (20%) of such required or permitted deposit or \$50,000, whichever is the larger amount, for the purpose of absorbing fluctuations in the value of assets and securities deposited, and to facilitate the exchange and substitution

Excess deposits
for absorbing
fluctuations.

of such assets and securities. During the solvency of the insurer any such excess shall be released to the insurer upon its request. During the insolvency of the insurer such excess deposit shall be released only as provided in section 144 (4).

No levy on
deposits allowed.

Section 142. **Levy upon deposit.** No judgment creditor or other claimant of an insurer shall have the right to levy upon any of the assets or securities held in this state as a deposit for the protection of the insurer's policyholders or policyholders and creditors. As to deposits pursuant to the retaliatory law, section 71, levy thereupon shall be permitted if so provided in the commissioner's order under which the deposit is made.

In event of
deficiency
of deposit.

Section 143. **Deficiency of deposit.** If for any reason the market value of assets and securities of an insurer held on deposit in this state, or in another state under custodial arrangements authorized by section 135 (3), falls below the amount required under this code to be so held, the insurer shall promptly deposit other or additional assets or securities eligible for deposit under this chapter and in amount sufficient to cure such deficiency. If the insurer has failed to cure the deficiency within twenty (20) days after receipt of notice thereof by registered mail from the commissioner, the commissioner shall forthwith revoke the insurer's certificate of authority.

Duration
of deposits.

Section 144. **Duration and release of deposit.** (1) Every deposit made in this state by an insurer pursuant to this code, including assets and securities held in another state under custodial arrangements permitted by section 135 (3), shall be held as long as there is outstanding any liability of the insurer as to which the deposit was so required; or, if a deposit required under the retaliatory law, section 71, the deposit shall be held for so long as the basis of such retaliation exists.

Release
of deposits.

(2) Upon the request of a domestic insurer, the commissioner shall return to the insurer the whole or any portion of the assets and securities of the insurer held on deposit when the commissioner is satisfied that the assets and securities so to be returned are subject to no liability and are not required to be longer held by any provision of law or purposes of the original deposit. If

the insurer has reinsured all its outstanding risks in another insurer or insurers authorized to transact insurance in this state then the commissioner shall deliver such assets and securities to such insurer or insurers so assuming such risks, upon (a) written notice to him by such domestic insurer that such assets and securities have been duly assigned, transferred and set over to such reinsuring insurer or insurers, which notice shall be accompanied by a duly verified copy of such assignment, transfer, or conveyance, and (b) in the case of deposits of the reserves of domestic life insurers under section 93, proof satisfactory to the commissioner that the reinsuring insurer or insurers has deposited or will deposit, and will maintain on deposit in public custody through the insurance supervisory official of its state of domicile, assets and securities of like quality in amount not less than the reserves then and thereafter of the policies and contracts so reinsured, in addition to any other deposit of such insurer required or permitted by law, and, unless the insurer is required so to deposit and maintain on deposit all of its reserves, that such deposit of such reserves will be so deposited and held on deposit for the special benefit and protection of the holders of the life insurance policies and annuity contracts so reinsured.

(3) The commissioner shall return to a foreign insurer any deposit made in this state by such insurer, when such insurer has ceased transacting insurance in this state, or in the United States, and the insurer is not subject to any liability in this state on account of which the deposit was held.

Return to
foreign insurer.

(4) If the insurer is subject to delinquency proceedings, as defined in chapter 26 of this code, upon the order of a court of competent jurisdiction the commissioner shall yield the assets and securities held on deposit to the receiver, conservator, rehabilitator, or liquidator of the insurer, or to any other properly designated official or officials who succeed to the management and control of the insurer's assets.

Release in event
of delinquency
proceedings.

(5) No release of deposited assets shall be made except upon application to and the written order of the commissioner. The commissioner shall have no personal liability for any release of any such deposit or part thereof so made by him in good faith.

Order of
commissioner
required.

CHAPTER 8—
AGENTS, SOLICITORS AND ADJUSTERS

Section 145. **Scope of chapter.** This chapter shall apply as to all stock, mutual and reciprocal insurers and as to all kinds of insurance and annuities.

"Agent" defined.

Section 146. **"Agent" defined.** An "agent" is an individual, firm or corporation appointed by an insurer to solicit applications for insurance or annuities or to negotiate insurance on its behalf, and if authorized to do so by the insurer, to effectuate and countersign insurance contracts.

"Life insurance agent" defined.

Section 147. **"Life insurance agent" defined.** For the purposes of this chapter, "life insurance agent" includes also an agent of a life insurer who is or proposes to be licensed as to the same insurer for disability insurance in addition to life insurance and annuities. Unless licensed as a life insurance agent as required by section 151, no person shall in this state solicit life insurance or annuities or procure applications therefor, or engage or hold himself out as engaging in the business of analyzing or abstracting life insurance policies or annuities or of counselling or advising or giving opinions (other than as a licensed attorney at law) relative to such insurance or annuities, for fee, commission or other compensation, other than as a salaried bona fide full-time employee so counselling and advising his employer relative to the insurance interests of the employer and of the subsidiaries or business affiliates of the employer, or with respect to the insurance interests of employees of such employer, subsidiaries, or affiliates under group insurance or similar insurance plans arranged by the employer or employers of such employees.

"Solicitor" defined.

Section 148. **"Solicitor" defined.** A "solicitor" is an individual appointed and authorized by an agent to solicit applications for insurance, other than life insurance or disability insurance, as a representative of such agent, and to collect premiums thereon when expressly so authorized by the agent.

Section 149. **Exceptions and exemptions from definition of agent and solicitor.** The definitions of agent and

solicitor contained in sections 146 through 148 shall not be deemed to include:

Exceptions and exemptions from definition of agent and solicitor.

(1) Individuals employed and used by agents for the performance of clerical, stenographic and similar office duties; incidental taking of an application for insurance from time to time in the office of the employing agent shall not constitute such an employee as an agent or solicitor if the employee's compensation is not contingent upon or related to the volume of such applications, insurance or premiums.

(2) The supervising general, state or special agent, or other supervising officer or supervising salaried employee of an insurer, who solicits only with or in conjunction with duly licensed agents of the insurer.

(3) The attorney-in-fact of a reciprocal insurer, or the salaried traveling representative of a reciprocal or mutual insurer not compensated on a commission basis.

(4) A person who secures and forwards information for the purpose of an existing group insurance contract or for enrolling individuals under an existing group insurance contract or issuing certificates thereunder where no commission is paid for such services.

Section 150. **"Adjuster" defined.** (1) An "adjuster" is a person who, on behalf of the insurer, for compensation as an independent contractor or as the employee of such an independent contractor, or for fee or commission, investigates and negotiates settlement of claims arising under insurance contracts.

"Adjuster" defined.

(2) A licensed attorney at law who is qualified to practice law in this state, or a salaried employee of an insurer or of a managing general agent, or a licensed agent who adjusts or assists in adjustment of losses arising under policies issued by the insurer represented by such agent, is not deemed to be an adjuster for the purposes of this chapter.

Exceptions.

Section 151. **License required, agents and solicitors; forms.**

(1) No person shall in this state act as or hold himself out to be an agent or solicitor, as to subjects of insurance

License required.

located, resident or to be performed in this state, unless then licensed as such agent or solicitor under this chapter.

(2) No agent or solicitor shall solicit or take application for, procure, or place for others any kind of insurance as to which he is not then licensed.

(3) No agent shall place any business (other than coverage of his own risks) with any insurer as to which he does not then hold an appointment or license as agent under this chapter, except as provided in section 170 as to life or disability insurance agents.

Commission shall prescribe forms.

(4) The commissioner shall prescribe and furnish forms required in connection with application for, issuance, continuation or termination of licenses and appointments.

Qualifications of agents and solicitors except life insurance agents.

Section 152. **General qualifications, agents and solicitors—Other than life insurance agents.** (1) For the protection of the people of this state the commissioner shall not issue, continue, or permit to exist any agent or solicitor license as to insurance other than life or disability, except in compliance with this chapter, or as to any individual not qualified therefor as follows:

(a) Must be twenty-one (21) years of age or more, or, if for a solicitor's license, must be at least eighteen (18) years of age.

(b) Must be a resident in and of this state.

(c) If for an agent's license, must have been appointed as agent by an authorized insurer, subject to issuance of the license.

(d) If for a solicitor's license, must have been appointed as solicitor by a licensed agent, subject to issuance of the license, and intend to make and make the soliciting of insurance a principal vocation.

(e) Must be competent, trustworthy and of good reputation.

(f) Must have had experience or training or be otherwise qualified in the kind or kinds of insurance as to which he is to be licensed, and be reasonably familiar with the provisions of this code which govern his operations as an insurance agent or solicitor.

(g) Must pass any written examination for the license required under this chapter.

(h) Must intend in good faith to act as, and must act as and hold himself out to be an agent or solicitor in the active solicitation and negotiation of insurance with the general public; and not seek or use the license for the negotiation or effectuation of insurance on his own property or interests or those of his relatives or of his employer. If during any calendar year more than thirty-five percent (35%) of the commissions earned or prospectively to be earned by such an applicant or licensee have been, or probably will be, derived from insurance of his own property or interests and those of his relatives and of his employer, the license will be deemed to have been used or to be intended to be used in violation of this subdivision (h).

(2) In determining the qualifications as to competence, training, experience and knowledge of the provisions of this code governing his operations as an insurance agent or solicitor, as provided for in subsection (1) above, of applicant agents or solicitors proposing to represent as such only insurers who confine their business in this state substantially to the insuring of the property, interests and risks of farmers, the commissioner shall relate such qualifications only to the kinds of insurance policies which the applicant will handle as such a licensee.

Section 153. **General qualification for license as life or disability insurance agent.** For the protection of the people of this state the commissioner shall not issue, continue, or permit to exist any agent license as to life or disability insurance except in compliance with this chapter or as to any individual not qualified therefor as follows:

Qualifications of life or disability insurance agents.

(1) Must be eighteen (18) years of age, or more.

(2) Must be a resident in and of this state; or of another state, if by reciprocal arrangements made by the commissioner with such other state similar privileges therein are granted to residents of this state. As a part of any such arrangements the commissioner shall be constituted as the attorney in fact of any such nonresident

for acceptance of service of process in any action or proceeding in this state arising out of or related to the transactions of the licensee in this state, with the same effect as though served upon the licensee personally in this state, and any license issued to or accepted by any such nonresident shall be subject to this condition.

(3) Must have been appointed as such an agent by an authorized insurer, subject to issuance of the license.

(4) Must be competent, trustworthy and of good reputation.

(5) Must have had experience or training or be otherwise adequately qualified in the kind or kinds of insurance as to which he is to be licensed, be reasonably familiar with the provisions of this code governing his operations as such an agent, and with the provisions of the policies and contracts he proposes to offer under the license.

(6) Must pass any written examination for the license required under this chapter.

(7) Must not use or intend to use the license principally for the writing of insurance on the lives or interests of himself or his relatives to the second degree.

(8) Must not be a funeral director, undertaker or mortician, or an officer, employee or representative thereof.

Licensing of firms and corporations as agents.

Section 154. Licensing of firms and corporations. (1) A firm or corporation shall be licensed only as an agent. If a firm, each general partner and each other individual to act for the firm under the license, and if a corporation, each individual to act for the corporation under the license, shall be named in the license and shall qualify therefor as though an individual licensee. The commissioner shall charge and the licensee shall pay a full additional license fee as to each respective individual so named in such license in excess of two.

Requirements of firm or corporation.

(2) A license shall not be issued to a firm or corporation unless organized under the laws of this state and maintaining its principal place of business in this state, and unless the transaction of business under the license

is within the purposes stated in the firm's partnership agreement or the corporation's articles.

(3) The licensee shall promptly notify the commissioner of all changes among its members, directors, and officers and of any other individual designated in the license.

Duty to notify of changes.

Section 155. Licensing of agents' association. (1) The commissioner may license as an agent as to kinds of insurance other than life and disability, any association of licensed Montana insurance agents, whether or not incorporated, and formed and existing for substantial purposes other than as to such license.

Licensing of agents' associations.

(2) The license shall be used solely for the purpose of enabling any such association to place, as agent, insurance of the properties, interests and risks of the State of Montana and of other public agencies, bodies and institutions, and to receive the customary commission thereon.

Purpose of license.

(3) Application for the license shall be made in the name of the association by its duly constituted president and secretary, and the license may be issued to the association in its name alone.

Application.

(4) The license powers may be exercised by such agents as may be appointed from time to time for the purpose of the association's board of trustees. The association shall forthwith file the names of such appointees with the commissioner. The names of such appointees need not appear in the license.

Powers.

(5) The fee for such license shall be the same as for the license of an individual agent.

Fees.

(6) Under the license the association may place insurance with any insurer represented as agent by any member of the association, and without requiring that the association have an appointment as agent by any such insurer; otherwise, the license shall be subject to the same requirements and prohibitions as apply to individual agent licenses.

Placing of insurance.

(7) The commissioner may, after a hearing with notice thereof to the association only (and without notice to the individual officers or members of the association),

Revocation.

revoke the license if he finds that continuation thereof is not in the public interest, or for such other applicable grounds as are available under this chapter in the case of individuals licensed as agents.

Application for agent or solicitor license.

Section 156. **Application for license.** (1) Application for an agent or solicitor license shall be made to the commissioner by the applicant, and be signed and sworn to by the applicant before a notary public or other person authorized by law to take acknowledgments of deeds.

Commissioner shall prepare forms.

(2) The commissioner shall designate and prepare forms for application for license which shall require full answers to such questions as may reasonably be necessary to determine the applicant's identity, residence, personal history, business record, experience and training in insurance, purpose for which the license is to be used and other facts as required by the commissioner to determine whether the applicant meets the applicable qualifications for the license applied for.

Kinds of insurance.

(3) If for an agent's license, the application shall state the kinds of insurance proposed to be transacted, and be accompanied by written appointment of the applicant as agent by an authorized insurer, subject to issuance of the license.

Written appointment of solicitor.

(4) If for a solicitor's license, the application shall be accompanied by written appointment of applicant as solicitor by a licensed agent, subject to issuance of the license.

Designation of powers in corporate application.

(5) If the applicant for an agent license is a firm or corporation, the application shall show, in addition, the names of all members, officers and directors, and shall designate each individual who is to exercise the powers to be conferred by the license upon the firm or corporation. Each such individual so designated shall furnish information as to himself, as part of the application, as though for an individual license.

Designation of officers in agents' association application.

(6) If the applicant for an agent license is an agents' association pursuant to section 155, the application shall show the names and residence addresses of the association's officers and trustees.

Other provisions.

(7) If for license as either agent or solicitor, the ap-

plication shall also show whether applicant was ever previously licensed to transact any kind of insurance in this state or elsewhere; whether any such license was ever refused, suspended or revoked; whether any insurer, general agent or agent (in the case of a solicitor application) claims applicant to be indebted to it, and if so the details thereof and the defenses, if any, of the applicant thereto; whether applicant ever had an agency contract cancelled, and the facts thereof; and if applicant is a married woman, like information with respect to her husband.

Certificate of insurer required.

(8) The commissioner shall require as part of the application for license the certificate of an officer or representative of the insurer proposed to be represented (in the case of applicants for license as agent), or of the proposed employing agent (in the case of applicants for license as solicitor) as to whether the applicant is known to him, whether the insurer or agent has investigated the character and business record of the applicant and the uses to be made of the license, if granted, and his opinion, based on such investigation, as to applicant's trustworthiness and competence and whether the applicant will use the license principally for the purpose of insuring his own risks or interests and those of his relatives or employer.

Fee must accompany application.

(9) All such applications shall be accompanied by the applicable license fee, appointment of agent fee where applicable, examination fee where required under section 157, all in the respective amounts stated in section 45 (fees and licenses).

Duty of commissioner to examine applicants.

Section 157. **Examination.** (1) After completion and filing of the application for license as required under section 156, the commissioner shall subject each applicant for license as agent or solicitor (unless exempted therefrom under subsection (5) below) to a personal written examination as to his competence to act as such agent or solicitor.

Individuals in firm or corporation.

(2) If the applicant is a firm or corporation, the examination shall be so taken by each individual who is to be named in the license as having authority to act for the applicant in its insurance transactions under the license.

Classifications
of insurance.

(3) Examination of an applicant for an agent's license shall cover all of the kinds of insurance for which the applicant has applied to be licensed, as constituted by any one or more of the following classifications:

- (a) Life insurance;
- (b) Disability insurance;
- (c) Property insurance;
- (d) Casualty insurance;
- (e) Vehicle insurance;
- (f) Surety insurance.

"Marine" included
in "property."

For the purposes of this provision "marine" insurance shall be deemed to be included in "property" insurance.

(4) Examination of an applicant for a solicitor's license shall cover all the kinds of insurance, other than life, as to which the appointing agent is licensed.

Exceptions.

(5) This section shall not apply to, and no such examination shall be required of:

(a) Any individual lawfully licensed as an agent or solicitor as to the kind or kinds of insurance to be transacted as of or immediately prior to the effective date of this code, and thereafter continuing to be so licensed.

(b) Any applicant for license covering the same kind or kinds of insurance as to which the applicant was licensed in this state, other than under a temporary license, within the twelve (12) months next preceding date of application, unless such previous license was suspended, revoked or continuation thereof refused by the commissioner.

(c) Nonresident applicants for license as life insurance agents under section 153 (2), if such applicant has already taken and successfully passed a similar examination for a similar license in the state of his residence, or is a licensed life insurance agent in such state and become so licensed prior to the time that such an examination was required in such state, and if under the reciprocal arrangements referred to in section 153 (2) a like exemption is granted by such other state as to residents of this state applying for license as life insurance agent in such other state.

(d) All applicants for license as agent for an insurer that confines its business in this state substantially to the insuring of the property, interests and risks of farmers, if exempted from examination by the commissioner, in his discretion, upon written request of the insurer.

(e) Transportation ticket agents of common carriers applying for license to solicit and sell only:

(i) Accident insurance ticket policies, or

(ii) Insurance of personal effects while being carried as baggage on such common carrier, as incidental to their duties as such transportation ticket agents.

(f) Agents' associations applying for license under section 155.

(g) Title insurance agents.

Section 158. **Conduct of examinations.** (1) The commissioner shall make any examination required under section 157 available to applicants with reasonable frequency, and at place in this state reasonably accessible to such applicants. The commissioner shall make any such examination available at his offices at Helena, Montana, on each business day.

Duty of
commissioner
to conduct
examinations.

(2) All the kinds of insurance or class thereof, as referred to in section 157 (3), which the applicant proposes to transact under the license applied for, shall be included in the same examination.

(3) The commissioner shall give, conduct and grade all examinations in a fair and impartial manner, and without unfair discrimination as between individuals examined.

(4) The commissioner may require a reasonable waiting period before re-examination of an applicant who has failed to pass a previous examination covering the same kind or kinds of insurance.

Section 159. **Issuance of license, and contents.** (1) The commissioner shall promptly issue licenses applied for to persons qualified therefor in accordance with this chapter.

Procedure for
issuing licenses.

(2) The license shall state the name and address of the licensee, date of issue, general conditions relative to expiration or termination, kind or kinds of insurance covered and the other conditions of the license.

(3) If the license is as agent for life and/or disability insurance only, the license shall state the name of the insurer to be so represented; if the license is as agent for any other kind or kinds of insurance it shall not state the name of any insurer to be so represented.

(4) If the licensee agent is a firm or corporation the license shall also state the name of each individual authorized thereunder to exercise the license powers.

(5) If the licensee is a solicitor the license shall state the name and address of the agent to be represented.

Number of
licenses required.

Section 160. **Number of licenses, agents.** (1) An agent licensed as to kinds of insurance other than life and/or disability insurance only, is required to have but one license covering the kinds of insurance to be transacted by him regardless of the number of insurers by whom he is appointed as agent, and the same license may include both life insurance and disability insurance.

(2) As to agents licensed as to life and/or disability insurance only, the agent shall have one license for each such insurer to be represented as agent.

(3) A life insurance agent may concurrently be licensed as to an additional life insurer or insurers upon due application, appointment and qualification. Upon request therefor filed with the commissioner by the insurer, the commissioner shall notify a life insurer thereof whenever any of its agents licensed as such in this state has been likewise licensed as to another life insurer.

Appointment
of agents.

Section 161. **Appointment of agents; continuation and termination.** (1) Each insurer appointing an agent in this state as to property or casualty or surety insurance shall file with the commissioner the appointment, specifying the kinds of insurance to be transacted by the agent for the insurer, and pay the fee therefor as stated in section 45. If the appointment includes casualty insurance, the agent may be appointed by the same insurer

also as to disability insurance without requiring an additional appointment or appointment fee.

(2) Subject to annual continuation by the insurer not later than May 31, each such appointment shall remain in effect until the agent's license is revoked or otherwise terminated, unless written notice of earlier termination of the appointment is filed with the commissioner by the insurer or agent.

Continuation of
appointment.

(3) Annually, prior to May 1, each insurer shall file with the commissioner an alphabetical list in duplicate of the names and addresses of all its agents whose appointments in this state are to remain in effect, accompanied by payment of the annual continuation of appointment fee as provided in section 45. At the same time the insurer shall also file with the commissioner an alphabetical list in duplicate of the names and addresses of all its agents whose appointments in this state are not to remain in effect.

Annual lists
to be filed.

(4) Subject to the agent's contract rights, an insurer may terminate an agency appointment at any time. The insurer shall promptly give written notice of such termination to the commissioner, and to the agent where reasonably possible. The commissioner may require of the insurer reasonable proof that the insurer has given such notice to the agent.

Termination
by insurer—
notice.

(5) As part of the notice of termination given the commissioner, the insurer shall file with the commissioner a statement of the facts relative to the termination and the cause thereof. Any information or statement contained in the notice of termination shall be privileged and shall not be admissible as evidence in any action or proceeding against the insurer or any representative thereof by or in behalf of any person affected by such termination.

Statement
accompanying
notice of
termination.

Section 162. **Rights of agent following termination of appointment.** (1) Following termination of any such agency appointment as to property, casualty or surety insurance, and subject to the terms of any agreement between the agent and the insurer, the agent may continue to service, and receive from the insurer commissions or other compensation relative to, business written

Rights of agents
after termination.

by him for the insurer during the existence of the appointment.

(2) This section does not apply as to agents of direct writing insurers or agents or insurers between whom the relationship of employer and employee exists.

Temporary agent licenses.

Section 163. **Temporary agent licenses.** (1) The commissioner may issue a temporary license as agent to or with respect to an individual qualified therefor only as to age, residence and trustworthiness, and without requiring such individual to take an examination, in the following cases:

In event of death of agent.

(a) To the surviving spouse or next of kin or to the administrator or executor, or the employee of such administrator or executor, of a licensed agent becoming deceased.

In event of disablement of agent.

(b) To the spouse, next of kin, employee or legal guardian of a licensed agent disabled by sickness, injury or insanity.

To employee of firm or corporation agent.

(c) To an employee of a firm, or officer or employee of a corporation, licensed as agent, upon the death or disability of an individual designated in the license to exercise the powers thereof.

To designee of agent in armed forces.

(d) To the designee of a licensed agent entering upon active service in the armed forces of the United States of America.

Pending examination.

(e) Upon request of the insurer, to an applicant for license as a life insurance agent, pending the taking of any examination required of the applicant by the commissioner under section 157, if the applicant is duly enrolled in and is actively pursuing an adequate course of instruction, as provided by or through the insurer, in preparation for such examination. Such license shall be for a period of not over ninety (90) days, or until the applicant has had a reasonable opportunity to take such examination and be informed by the commissioner as to the results thereof, whichever is the shorter period, but subject to extension by the commissioner as provided in subsection (3) below.

Application.

(2) The temporary license shall be issued upon application filed with the commissioner in such form and

containing such information as the commissioner may reasonably require, and upon payment of the applicable fee as stated in section 45.

(3) The temporary license shall be for a period of not over ninety (90) days, subject to extension by the commissioner in his discretion for an additional period of not more than ninety (90) days; except, that such a license issued pursuant to subdivision (a) above, may be continued without payment of additional fee until the executor or administrator disposes of the insurance business, but not to exceed a period of fifteen (15) months. Temporary license issued to the next of kin under such subdivision (a) shall not be extended for an additional term or terms after appointment and qualification of such an administrator or executor.

Period of temporary license.

(4) The fee paid for the temporary license may be applied upon the fee required for any permanent license issued to the licensee upon or prior to expiration of the temporary license and covering the same kinds of insurance.

Fee may be applied on permanent license fee.

Section 164. **Limitations and rights under temporary license.**

Limitations of temporary license.

(1) The commissioner shall not issue more than one temporary license, to or with respect to the same individual to be so licensed, within any twelve-month period.

(2) The temporary license may cover the same kinds of insurance for which the agent thereby being replaced was licensed.

(3) As to a temporary agent's license issued on account of the death or disability of an agent, the licensee may so represent all of the insurers last represented by such deceased or disabled agent and without the making of new appointment of such licensee by such insurers; but the licensee shall not be appointed as to any additional insurer or additional kind of insurance under such a temporary license. This provision shall not be deemed to prohibit termination of its appointment by any insurer.

(4) A temporary licensee shall have the same license powers and duties as under a permanent license.

Rights under temporary license.

Requirements for
solicitor's license.

Section 165. **Special requirements as to solicitors.**

(1) A solicitor shall not be appointed or licensed as to more than one agent.

(2) The solicitor's license shall cover all the kinds of insurance, other than life and disability insurance, for which the appointing agent is licensed; except, that the solicitor's license shall also cover disability insurance where written by a casualty, property, or surety insurer represented by the agent.

(3) A solicitor shall not concurrently be licensed as agent except as to life or disability insurance.

(4) A solicitor shall not have authority to bind risks or countersign policies.

(5) The transactions of a solicitor under his license shall be in the name of the agent by whom appointed, and such agent shall be responsible for the acts or omissions of the solicitor within the scope of his appointment.

(6) The solicitor shall maintain his office with that of the appointing agent, and records of his transactions under the license shall be maintained as a part of the records of such agent.

(7) The solicitor's license shall remain in the custody of the agent by whom appointed. Upon termination of the appointment, the agent shall give written notice thereof to the commissioner and deliver the license to the commissioner for cancellation.

Insurance
vending
machines
permitted.

Section 166. **Insurance vending machines.** (1) A licensed resident agent may solicit applications for and issue policies of personal travel accident insurance by means of mechanical vending machines supervised by him and placed at airports, railroad stations, bus stations and similar places where transportation tickets are sold and of convenience to the traveling public, if the commissioner finds:

Requirements
of policy.

(a) That the policy to be sold provides reasonable coverage and benefits, is reasonably suited for sale and issuance through vending machines, and that use of such a machine therefor in a particular proposed location would be of material convenience to the public;

(b) That the type of vending machine proposed to be used is reasonably suitable and practical for the purpose;

Suitable
machine.

(c) That reasonable means are provided for informing the prospective purchaser of any such policy of the coverage and restrictions of the policy; and

Information.

(d) That reasonable means are provided for refund to the applicant or prospective applicant of money inserted in defective machines and for which no insurance, or a less amount than that paid for, is actually received.

Refund.

(2) As to each such machine to be so used, the commissioner shall issue to the agent a special vending machine license. The license shall specify the name and address of the insurer and agent, the name of the policy to be so sold, the serial number of the machine, and the place where the machine is to be in operation. The license shall be subject to annual continuation, to expiration, suspension or revocation coincidentally with that of the agent. The commissioner shall also revoke the license as to any machine as to which he finds that the conditions upon which the machine was licensed, as referred to in subsection (1), no longer exist. The license fee shall be as stated in section 45 for each license year or part thereof for each respective vending machine. Proof of the existence of a subsisting license shall be displayed on or about each such vending machine in use in such manner as the commissioner may reasonably require.

Special license.

Section 167. **Place of business—Display of license—Records.**

(1) Every agent shall have and maintain in this state a place of business accessible to the public. Such place of business shall be that wherein the licensee principally conducts transactions under his license. The address of such place shall appear upon the license, and the licensee shall promptly notify the commissioner of any change thereof. Nothing in this section shall be deemed to prohibit maintenance of such place of business in the licensee's place of residence in this state.

Place of
business
required.

(2) The licenses of the licensee, and the licenses of solicitors appointed by and representing the licensee,

Display of licenses.

shall be conspicuously displayed in such place of business in a part thereof customarily open to the public.

Records required.

(3) The agent shall keep at his place of business complete records pertaining to transactions under his license and the licenses of his solicitors, for a period of at least three (3) years after completion of the respective such transactions.

Exception.

(4) This section shall not apply as to life and disability insurances.

Premiums received are trust fund.

Section 168. Reporting and accounting for premiums.

(1) All premiums or return premiums received by an agent or solicitor shall be trust funds so received by the licensee in a fiduciary capacity, and the agent or solicitor shall in the applicable regular course of business account for and pay the same to the insured, insurer or agent entitled thereto. If the licensee establishes a separate deposit for funds so belonging to others in order to avoid a commingling of such fiduciary funds with his own funds, he may deposit and commingle in the same such separate deposit all such funds belonging to others so long as the amount of such deposit so held for each respective other person is reasonably ascertainable from the records and accounts of the licensee.

Penalty for misappropriation.

(2) Any agent or solicitor who, not being lawfully entitled thereto, diverts or appropriates such funds or any portion thereof to his own use, shall upon conviction be guilty of larceny and shall be punished as provided by law.

Exchange of business permitted between licensed agents.

Section 169. **Exchange of business; sharing commissions.** (1) An agent may, occasionally only, place an insurance coverage with an insurer as to which he is not then licensed or appointed as an agent, and the insurer shall accept such business, only when placed through a licensed agent, resident in this state, of the insurer. Both agents involved in such an exchange of business must be licensed as to all of the kinds of insurance represented by the coverage so placed.

Sharing commissions.

(2) The agents involved in a lawful exchange of business under subsection (1) above may divide between them the commission or compensation payable on account of such coverage.

(3) No agent or solicitor shall directly or indirectly share his commissions or other compensation received or to be received by him on account of a transaction under his license with any person not also licensed under this chapter as to the same kind or kinds of insurance involved in such transactions, except as provided in section 69 (policies originating outside state, etc.). This provision shall not affect payment of the regular salaries due employees of the licensee, or the distribution in regular course of business of compensation and profits among members or stockholders if the licensee is a firm or corporation, or use of funds for family or personal purposes.

Sharing with unlicensed person prohibited.

(4) This section does not apply as to those transactions with surplus lines agents which are lawful under section 190 nor as to life or disability insurance placed as provided in section 170.

Exception.

Section 170. **Life or disability agent may place excess or rejected business.** A life or disability insurance agent may from time to time place excess or rejected risks in any other life or disability insurer authorized to transact insurance in this state, with the knowledge and approval of the insurer or insurers as to which the agent is so licensed, and may receive a commission thereon without being required to have a license as to such other insurer.

Life agent may place excess or rejected business.

Section 171. **Adjuster's license; qualifications; catastrophe adjustments.** (1) No person shall in this state act as or hold himself out to be an adjuster unless then licensed therefor under this chapter. Application for license shall be made to the commissioner according to forms as prescribed and furnished by him. The commissioner shall issue the license as to individuals qualified therefor upon payment of the license fee stated in section 45.

Adjuster's license required.

(2) To be licensed as an adjuster the applicant must be qualified therefor as follows:

Qualifications of adjuster.

(a) Must be an individual twenty-one (21) years of age or more.

(b) Must be a resident in and of Montana, or resi-

dent of another state which will permit residents of Montana regularly to act as adjusters in such other state.

(c) Must be a full-time salaried employee of a licensed adjuster, or a graduate of a recognized law school, or must have had experience or special education or training as to the handling of loss claims under insurance contracts of sufficient duration and extent reasonably to make him competent to fulfill the responsibilities of an adjuster.

(d) Must be of good character and reputation.

Office.

(e) Must have and maintain in this state an office accessible to the public and keep therein the usual and customary records pertaining to transactions under the license. This provision shall not be deemed to prohibit maintenance of such office in the home of the licensee.

Firm or corporation.

(3) A firm or corporation, whether or not organized under the laws of this state, may be licensed as an adjuster if each individual who is to exercise the license powers is separately licensed, or is named in the firm or corporation license and is qualified as for an individual license as adjuster. An additional full license fee shall be paid as to each individual in excess of one so named in the firm or corporation license to exercise its powers.

Exception in event of catastrophe.

(4) Except, that no such adjuster's license or qualifications shall be required as to any adjuster who is sent into this state by and on behalf of an insurer or adjusting firm or corporation for the purpose of investigating or making adjustments of a particular loss under an insurance policy, or for the adjustment of a series of losses resulting from a catastrophe common to all such losses.

Section 172. Continuance, expiration of licenses.

Continuation of solicitor and adjuster licenses.

(1) All solicitor and adjuster licenses issued under this chapter, and all agent licenses as to life and/or disability insurance only, shall continue in force until expired, suspended, revoked or terminated, but subject to payment to the commissioner annually on or before May 1 of the applicable continuation fee as stated in section 45, accompanied by written request for such continuation. Such request for continuation as to agent licenses

for life insurance and/or disability insurance only, shall be made by the insurer in the form of an alphabetical list in duplicate of the names and addresses of its agents whose licenses are to be continued in this state, accompanied by payment of the annual continuation fee therefor as provided in section 45. At the same time the insurer shall also file with the commissioner an alphabetical list in duplicate of the names and addresses of all its agents whose licenses in this state are not to remain in effect. Section 161 (5) shall apply as to any licenses so terminated by the insurer. As to a solicitor's license, such request shall be signed by the agent by whom the licensee is employed.

Form of annual request for continuation.

Fees must accompany request.

(2) Any license referred to in subsection (1) as to which such fee and request for continuation is not received by the commissioner as required in such subsection (1) shall be deemed to have expired as at midnight on May 31 next following. Request for continuation of any such license and/or payment of the continuation fee therefor which is received by the commissioner after such May 1 and prior to the next following June 15, may be accepted and effectuated by the commissioner, in his discretion, if accompanied by an annual continuation fee in twice the amount otherwise required.

In event of failure to pay.

(3) The license of an agent as to property or casualty or surety insurance shall continue in force as long as there is in effect as to such agent as shown by the commissioner's records an appointment or appointments, as agent of authorized insurers, covering collectively all of the kinds of insurance included in the agent's license. Upon termination of all of such an agent's agency appointments as to a particular kind of insurance, and failure to secure and file with the commissioner a new appointment as to such kind of insurance within ninety (90) days thereafter, the agent's license shall automatically thereupon expire and terminate as to such kind of insurance and the licensee shall promptly deliver his license to the commissioner for reissuance, without fee or charge, as to the kinds of insurance covered by the agent's remaining appointments.

Termination and reissuance.

(4) This section shall not apply to temporary licenses issued under section 163.

Exception—temporary licenses.

Section 173. **Suspension, revocation, refusal of license.**

Suspension,
revocation,
refusal of license
for cause.

Hearing on notice.

(1) The commissioner may suspend for not more than twelve (12) months, or may revoke or refuse to continue any license issued under this chapter or any surplus line agent license if, after hearing held on not less than twenty (20) days advance notice by registered mail of such hearing and of the charges against the licensee given as provided in section 30 (3) to the licensee and to the insurers represented (as to an agent) or to the appointing agent (as to a solicitor), he finds that as to the licensee any one or more of the following causes exist:

(a) For any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner.

(b) For obtaining or attempting to obtain any such license through misrepresentation or fraud.

(c) For violation of or noncompliance with any applicable provision of this code, or for wilful violation of any lawful rule, regulation, or order of the commissioner.

(d) For misappropriation or conversion to his own use, or illegal withholding, of moneys or property belonging to policyholders, or insurers, or beneficiaries, or others and received in conduct of business under the license.

(e) Conviction, by final judgment, of a felony involving moral turpitude.

(f) If in the conduct of his affairs under the license the licensee has used fraudulent or dishonest practices, or has shown himself to be incompetent, untrustworthy or a source of injury and loss to the public.

(2) The license of a firm or corporation may be suspended, revoked or refused also for any of such causes as relate to any individual designated in the license to exercise its powers.

Section 174. **Procedure following suspension, revocation.**

Procedure
following
suspension,
revocation.

(1) Upon suspension or revocation of any such license the commissioner shall forthwith notify the licensee thereof either in person or by mail addressed to the licensee at his address last of record with the commissioner. Notice by mail shall be deemed effectuated when so mailed. The commissioner shall give like notice to the insurers represented by the agent, in the case of an agent's license, and to the agent by whom appointed in the case of a solicitor's license.

Notice.

(2) Suspension or revocation of the license of an agent shall automatically revoke or suspend the licenses of all solicitors appointed by him.

Automatic
suspension,
revocation of
solicitors' licenses.

(3) The commissioner shall not again issue license under this code to or as to any person whose license has been revoked, until after expiration of one year and thereafter not until such person again qualifies therefor in accordance with the applicable provisions of this code. A person whose license has been revoked twice, shall not again be eligible for any license under this code.

Limitation
on issuance of
new license.

(4) If the license of a firm or corporation is so suspended or revoked, no member of such firm, or officer or director of such corporation, shall be licensed or be designated in any license to exercise the powers thereof during the period of such suspension or revocation, unless the commissioner determines upon substantial evidence that such member, officer or director was not personally at fault and did not acquiesce in the matter on account of which the license was suspended or revoked.

Limitation
on members of
firm or
corporation.

Section 175. **Return of license.**

(1) All licenses issued under this chapter, although issued and delivered to the licensee agent, solicitor or adjuster, shall at all times be the property of the State of Montana. Upon any expiration, termination, suspension or revocation of the license, the licensee or other person having possession or custody of the license shall forthwith deliver it to the commissioner either by personal delivery or by mail.

Licenses are
state property.

Surrender
of license.

(2) As to any license lost, stolen or destroyed while in the possession of any such licensee or person, the commissioner may accept in lieu of return of the license, the affidavit of the licensee or other person responsible for

Affidavit for
lost, stolen,
destroyed license.

or involved in the safekeeping of such license, concerning the facts of such loss, theft or destruction.

CHAPTER 9 — UNAUTHORIZED INSURERS AND SURPLUS LINES

Section 176. **Representing or aiding unauthorized insurer prohibited.**

(1) No person shall in this state directly or indirectly act as agent for, or otherwise represent or aid on behalf of another, any insurer not then authorized to transact insurance in this state, in the solicitation, negotiation or effectuation of insurance or of annuity contracts, inspection of risks, fixing of rates, investigation or adjustment of losses, collection of premiums, or in any other manner in the transaction of insurance with respect to subjects of insurance resident, located or to be performed in this state.

Representing
or aiding of
unlicensed
insurer
forbidden.

Exceptions.

(2) This section shall not apply to:

Acceptance
of service.

(a) Acceptance of service of process by the commissioner under section 180.

Surplus lines
insurers.

(b) Surplus lines insurance, and other transactions as to which certificate of authority is not required of an insurer as stated in section 47.

Penalty.

(3) Any person violating this section shall upon conviction thereof be guilty of a felony.

Suits by
unauthorized
insurers
prohibited.

Section 177. **Suits by unauthorized insurers prohibited.** As to transactions not permitted under section 47 of this code, no unauthorized insurer shall institute or file, or cause to be instituted or filed, any suit, action or proceeding in this state to enforce any right, claim or demand arising out of any insurance transaction in this state, until such insurer has obtained a certificate of authority to transact such insurance in this state.

Title.

Section 178. **Unauthorized insurers process act; title; interpretation.** (1) Sections 178 through 183 constitute and may be cited as the unauthorized insurers process act.

Uniform law.

(2) Such act shall be so interpreted as to effectuate its general purpose to make uniform the law of those states which enact it.

Section 179. **Commissioner process agent.** Delivery, effectuation, or solicitation of any insurance contract, by mail or otherwise, within this state by an unauthorized insurer, or the performance within this state of any other service or transaction connected with such insurance by or on behalf of such insurer, shall be deemed to constitute an appointment by such insurer of the commissioner and his successors in office as its attorney, upon whom may be served all lawful process issued within this state in any action or proceeding against such insurer arising out of any such contract or transaction; and shall be deemed to signify the insurer's agreement that any such service of process shall have the same legal effect and validity as personal service of process upon it in this state.

Commissioner
deemed appointed
agent of
unauthorized
insurer for
service of process.

Section 180. **Service of process.** (1) Service of process upon any such insurer pursuant to section 179 shall be made by delivering to and leaving with the commissioner or some person in apparent charge of his office two (2) copies thereof and the payment to him of such fees as may be prescribed by law. The commissioner shall forthwith mail by registered mail one of the copies of such process to the defendant at its principal place of business last known to the commissioner, and shall keep a record of all process so served upon him. Such service of process is sufficient, provided notice of such service and a copy of the process are sent within ten days thereafter by registered mail by plaintiff's attorney to the defendant at its last known principal place of business, and the defendant's receipt or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow.

Procedure—
service of process
on unauthorized
insurer.

(2) Service of process in any such action, suit or proceeding shall in addition to the manner provided in subsection (1) of this section be valid if served upon any person within this state, who in this state on behalf of such insurer is:

Valid service.

(a) Soliciting insurance, or

(b) Making any contract of insurance or issuing or delivering any policies or written contracts of insurance, or

(c) Collecting or receiving any premium for insurance; and a copy of such process is sent within ten (10) days thereafter by registered mail by the plaintiff's attorney to the defendant at the last known principal place of business of the defendant, and the defendant's receipt, or the receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow.

(3) No plaintiff or complainant shall be entitled to a judgment by default under this section until the expiration of thirty (30) days from the date of the filing of the affidavit of compliance.

(4) Nothing in this section contained shall limit or abridge the right to serve any process, notice or demand upon any insurer in any other manner now or hereafter permitted by law.

Section 181. **Exemptions from service of process provisions.** Sections 178, 179 and 180 shall not apply to surplus line insurance lawfully effectuated under this chapter, or to reinsurance, nor to any action or proceeding against an unauthorized insurer arising out of:

(1) Wet marine and transportation insurance.

(2) Insurance on or with respect to subjects located, resident, or to be performed wholly outside this state, or on or with respect to vehicles or aircraft owned and principally garaged outside this state.

(3) Insurance on property or operations of railroads engaged in interstate commerce, or

(4) Insurance on aircraft or cargo of such aircraft, or against liability, other than employer's liability, arising out of the ownership, maintenance, or use of such

Exemptions—
surplus line
insurance,
reinsurance and
others listed.

aircraft, where the policy or contract contains a provision designating the commissioner as its attorney for the acceptance of service of lawful process in any action or proceeding instituted by or on behalf of an insured or beneficiary arising out of any such policy, or where the insurer enters a general appearance in any such action.

Section 182. **Defense of action by unauthorized insurer.** (1) Before an unauthorized insurer shall file or cause to be filed any pleading in any action or proceeding instituted against it under sections 179 and 180 of this chapter, such insurer shall:

Requirements
precedent
to filing of
pleading by
unauthorized
insurer.

(a) Procure a certificate of authority to transact insurance in this state, or

Certificate
of authority.

(b) Deposit with the clerk of the court in which such action or proceeding is pending cash or securities or file with such clerk a bond with good and sufficient sureties, to be approved by the court, in an amount to be fixed by the court sufficient to secure the payment of any final judgment which may be rendered in such action. The court may in its discretion make an order dispensing with such deposit or bond where the insurer makes a showing satisfactory to the court that it maintains in a state of the United States funds or securities, in trust or otherwise, sufficient and available to satisfy any final judgment which may be entered in such action or proceeding, and that the insurer will pay any final judgment entered therein without requiring suit to be brought on such judgment in the state where such funds or securities are located.

Deposit.

(2) The court in any action or proceeding in which service is made in the manner provided in section 180 may, in its discretion, order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of subsection (1) above, and to defend such action.

Stay of action.

(3) Nothing in subsection (1), above, is to be construed to prevent an unauthorized insurer from filing a motion to quash or to set aside the service of any process made in the manner provided in section 180 hereof, on the ground either:

Exception—
motion to quash
or set aside.

(a) That such unauthorized insurer has not done any of the acts enumerated in section 179, or

(b) That the person on whom service was made pursuant to subsection (2) of section 180 was not doing any of the acts therein enumerated.

Attorney's fees
may be allowed.

Section 183. **Attorneys fees.** In any action against an unauthorized insurer under this unauthorized insurers service of process act, if the insurer has failed for thirty (30) days after demand prior to the commencement of the action to make payment in accordance with the terms of the insurance contract, and it appears to the court that such refusal was vexatious and without reasonable cause, the court may allow to the plaintiff a reasonable attorney's fee and include such fee in any judgment that may be rendered in such action. The fee shall not exceed one-third of the amount which the court or jury finds the plaintiff is entitled to recover against the insurer, but in no event shall such fee be less than one hundred dollars (\$100.00). Failure of an insurer to defend any such action shall be deemed prima facie evidence that its failure to make payment was vexatious and without reasonable cause.

Title.

Section 184. **Surplus line insurance law; title.** Sections 184 through 201 of this chapter constitute and may be referred to as "the surplus line insurance law."

"Surplus line"
defined.

Section 185. **"Surplus line" insurance.** If certain insurance coverages cannot be procured from authorized insurers, such coverages, hereinafter designated "surplus lines," may be procured from unauthorized insurers subject to the following conditions:

Licensed surplus
line agent.

(1) The insurance must be procured through a licensed surplus line agent.

Limitation as to
unauthorized
insurer.

(2) The full amount of insurance required must not be procurable, after diligent effort has been made to do so, from among a majority of the insurers authorized to transact and actually writing that kind and class of insurance in this state and the amount of insurance placed in an unauthorized insurer shall be only the excess over the amount procurable from authorized insurers.

(3) The insurance must not be so procured for the purpose of securing advantages either as to:

Prohibited
purposes.

(a) A lower premium rate than would be accepted by an authorized insurer; or

(b) Terms of the insurance contract.

Section 186. **Agents affidavit.** At the time of procuring, effecting, and issuing any such insurance, the surplus line agent shall execute an affidavit, in form as prescribed or accepted by the commissioner, setting forth facts referred to in section 185 and file such affidavit with the commissioner. Affidavits filed under this section shall be subject to public inspection unless the commissioner determines that the public interest requires otherwise.

Agent's
affidavit
required.

Section 187. **Endorsement of contract.** Every insurance contract, cover, note, or certificate of insurance procured and delivered as a surplus line coverage under this law shall be endorsed as having been "issued in an unauthorized insurer under the surplus line insurance law, under agent's license No....." The surplus line agent shall properly fill in and sign the endorsement.

Endorsement
of contract
required.

Section 188. **Surplus line insurance valid.** Insurance contracts procured as "surplus line" coverages from unauthorized insurers in accordance with this law shall be fully valid and enforceable as to all parties, and shall be given acceptance and recognition in all matters and respects to the same effect as like contracts issued by authorized insurers.

Validity of surplus
line contract.

Section 189. **Licensing of surplus line agent; fee; bond.** Any person, while licensed as a resident insurance agent of this state as to property, casualty, and surety insurances, and who is deemed by the commissioner to be qualified therefor by insurance experience and to be trustworthy, may be licensed as a surplus line agent as follows:

Licensing of
surplus line
agent.

(1) Application to the commissioner for the license shall be made on forms furnished by the commissioner.

Application.

(2) License fee in the amount stated in section 45 shall be paid to the commissioner. The license shall expire on the April 1 next after its date of issue.

Fee.

Bond.

(3) Prior to issuance of license the applicant shall file with the commissioner, and thereafter for as long as the license remains in effect he shall keep in force a bond in favor of the State of Montana in the penal sum of two thousand dollars (\$2,000), with authorized corporate sureties approved by the commissioner. The bond shall be conditioned that the agent will conduct business under the license in accordance with the provisions of the surplus lines insurance law and that he will promptly remit the taxes provided by such law. The bond shall not be terminated unless at least thirty (30) days prior written notice thereof is filed with the commissioner.

Authority under license.

Section 190. **Agent's authority under license; acceptance of business from other agents.** (1) Under a surplus line agent's license the licensee shall have the right to place surplus line coverages, in compliance with the surplus line insurance law, with any foreign or alien insurer or insurers not otherwise authorized to transact insurance in this state, and as to such coverages to act as agent in this state for such insurer or insurers.

Business from other agents.

(2) The surplus line agent may accept surplus line business from any duly licensed agent of an authorized insurer and may compensate him therefor.

Surplus lines placed in solvent insurers—qualifications.

Section 191. **Surplus lines in solvent insurers.** A surplus line agent shall not knowingly place surplus line insurance with insurers unsound financially. The agent shall ascertain the financial condition of the unauthorized insurer before placing insurance therewith. The agent shall so insure only either:

(1) With an insurer which is an authorized insurer in at least one state of the United States for the kind of insurance involved, and which, if a stock insurer, has capital stock and surplus of at least three hundred fifty thousand dollars (\$350,000) or, if any other type of insurer, has surplus of at least three hundred fifty thousand dollars (\$350,000); or

(2) With an alien insurer, other than one qualified under subdivision (1) above, which has an established and effective trust fund of at least four hundred thousand dollars (\$400,000) within the United States administered by a recognized financial institution and held for

the benefit of all its policyholders in the United States or policyholders and creditors in the United States.

Section 192. **Evidence of the insurance; changes; penalty.** (1) Upon placing a surplus line coverage the surplus line agent shall promptly issue and deliver to the insured evidence of the insurance, consisting either of the policy as issued by the insurer or, if such policy is not then available, a certificate of insurance signed or countersigned by the agent. Such certificate shall show the subject, coverage, conditions and term of the insurance, the premium charged and taxes collected from the insured, and the name and address of the insurer. If the direct risk is assumed by more than one insurer, the certificate shall state the name and address and proportion of the entire direct risk assumed by each such insurer.

Duty to issue evidence of surplus line coverage.

(2) If after the issuance and delivery of any such certificate there is any change as to the identity of the insurers, or the proportion of the direct risk assumed by the insurer as stated in the original certificate, or in any other material respect as to the insurance coverage evidenced by the certificate, the agent shall promptly issue and deliver to the insured a substitute certificate accurately showing the current status of the coverage and the insurers responsible thereunder.

Procedure for corrections.

(3) If a policy issued by the insurer is not available upon placement of the insurance and the agent has issued and delivered a certificate as hereinabove provided, upon request therefor by the insured the agent shall as soon as reasonably possible procure from the insurer its policy evidencing such insurance and deliver such policy to the insured in replacement of the certificate theretofore issued.

Duty to procure policy.

(4) Any surplus line agent who knowingly or negligently issues or delivers a false certificate of insurance, or fails promptly to notify the insured of any material change with respect to such insurance by delivery to the insured of a substitute certificate as provided in subsection (2), shall be guilty of a violation of this code and upon conviction shall be subject to the penalties provided by section 17 of this code or to any greater applicable penalty otherwise provided by law.

Penalty for issuing false evidence of insurance.

Liability of insurer fixed as to losses and unearned premiums.

Section 193. **Liability of insurer as to losses and unearned premiums.** (1) As to a surplus line risk which has been assumed by an unauthorized insurer pursuant to this surplus lines insurance law, and if the premium thereon has been received by the surplus line agent who placed such insurance, in all questions thereafter arising under the coverage as between the insurer and the insured the insurer shall be deemed to have received the premium due to it for such coverage; and the insurer shall be liable to the insured as to losses covered by such insurance, and for unearned premiums which may become payable to the insured upon cancellation of such insurance, whether or not in fact the agent is indebted to the insurer with respect to such insurance or for any other cause. This provision shall not affect rights as between the insurer and the surplus line agent.

Subjection of unauthorized insurer.

(2) Each unauthorized insurer assuming a surplus lines direct risk under this surplus line insurance law shall be deemed thereby to have subjected itself to the terms of this section.

Records and annual statements of surplus line agent required.

Section 194. **Records and annual statement.** (1) Each surplus line agent shall keep a separate record and account of all business transacted under his license, including a copy of each daily report, if any, and of each certificate of insurance issued by him. The records shall be available for examination by the commissioner at any reasonable time within five (5) years after the issuance of the coverage to which it relates.

(2) Prior to April 1 of each year the agent shall file with the commissioner a statement for the calendar year preceding, showing:

- (a) Name and address of each insured for whom surplus line insurance was procured;
- (b) Name and home office address of each insurer providing such insurance;
- (c) Amount of each such coverage, the premium rate and the gross premium charged therefor;
- (d) Date and term of the policy;
- (e) Amount of premium returned on each policy cancelled or not taken; and

(f) Such additional information as the commissioner may reasonably require.

Section 195. **Tax on surplus lines.** There is imposed upon premiums collected for surplus line insurance transacted in this state a tax at the same rate and computed in the same manner as provided in section 66 as to premiums of authorized insurers; except that amounts collected from the insured specifically for applicable state and federal taxes, and in excess of the premium otherwise required, shall not be deemed to be part of the premium for the purposes of such computation. Upon filing of the annual statement referred to in section 194 (2) the surplus line agent shall pay to the commissioner the amount of tax owing as to surplus line insurance business transacted by him during the preceding calendar year. If a surplus line policy covers risk or exposures only partially in this state, the tax payable shall be computed upon the proportion of the premium which is properly allocable to the risks or exposures located in this state.

Tax on surplus lines.

Payment with filing of annual statement.

Section 196. **Penalty for failure to file statement, pay tax.** Every surplus line agent who fails to make and file the annual statement as required under section 194 or to pay the taxes as required under section 195, shall be liable to a penalty of twenty-five dollars (\$25) for each day of delinquency, commencing with April 1. The tax and penalty may be recovered in an action instituted by the commissioner in the name of the state in any court of competent jurisdiction, the attorney general representing him. The penalty when collected shall be paid to the state treasurer and placed to the credit of the general fund. The surplus line agent's license shall also be subject to revocation as provided in section 197.

Penalty for failure to file statement, pay taxes.

Section 197. **Revocation of agent's license.** (1) The commissioner shall revoke or suspend any surplus line agent's license, together with his license as an insurance agent or solicitor:

Revocation of surplus line agent's license for cause.

- (a) If the agent fails to file his annual statement or to remit the tax as required by law; or
- (b) If the agent fails to keep the records, or to allow the commissioner to examine his records, as required by law; or

(c) If the agent falsifies the affidavit required by section 186; or

(d) For any of the causes for which an insurance agent's license may be revoked.

(2) The procedures provided by section 173 for the suspension or revocation of agents' licenses shall be applicable to suspension or revocation of a surplus line agent's license.

(3) No agent whose license has been so revoked or suspended shall again be so licensed within one year thereafter, nor until all penalties and delinquent taxes owing by him have been paid.

Section 198. Actions against insurer; venue; service of process. Every unauthorized insurer issuing a surplus line coverage under this surplus line insurance law shall be deemed to be doing business in this state as an unlicensed insurer, and may be sued in this state upon any cause of action arising under any insurance contract so made by it. Such suit shall be brought in the district court of the county wherein the plaintiff resides.

Section 199. Commissioner appointed process agent; service of process. (1) Every surplus line insurer before insuring as such under this law shall in writing appoint the commissioner as its true and lawful attorney upon whom legal process in any action or proceeding against it in this state shall be served; and in such writing shall agree that any such process served upon such attorney shall be of the same legal force and validity as if served in this state upon such insurer, and that such authority shall continue in force so long as any liability remains outstanding against it in this state. At the time of filing such appointment the insurer shall also file designation of the name and address of the person to whom process against it served upon the commissioner is to be forwarded. The insurer may change such designation by a new filing.

(2) Service upon such an insurer shall be made upon the commissioner, and in accordance with the procedures, requirements, and results as provided under section 64.

Section 200. Rules and regulations. (1) The commis-

sioner shall make or may approve and adopt reasonable rules and regulations, consistent with this surplus line insurance law, for any or all of the following purposes:

(a) Effectuation of such law;

(b) Establishment of procedures through which determination is to be made as to the eligibility of particular proposed coverages for placement with a surplus line insurer or insurers; and

(c) Establishment, procedures, and operations of any voluntary organization of surplus line insurance agents or others designed to assist such agents to comply with such law.

(2) Such rules and regulations shall be subject to the procedures and carry the penalty provided by section 29.

Section 201. Exemptions from surplus line law. The provisions of this surplus line insurance law controlling the placing of insurance with unauthorized insurers shall not apply to reinsurance or to the following insurances when so placed by licensed insurance agents of this state:

(1) Wet marine and transportation insurances;

(2) Insurance on subjects located, resident, or to be performed wholly outside of this state, or on vehicles or aircraft owned and principally garaged outside this state;

(3) Insurance on property or operations of railroads engaged in interstate commerce; and

(4) Insurance of aircraft owned or operated by manufacturers of aircraft, or aircraft operated in scheduled interstate flight, or cargo of such aircraft, or against liability, other than workmen's compensation and employer's liability, arising out of the ownership, maintenance or use of such aircraft.

Section 202. Report and tax of independently procured coverages. (1) Every insured who in this state procures or causes to be procured or continues or renews insurance in an unauthorized foreign insurer, or any self-insurer who in this state so procures or continues excess

Authority of commissioner to make rules consistent with surplus line insurance law.

Exemptions from surplus line law.

Report and tax required of independently procured coverages.

Unauthorized insurer may be sued in district court.

Commissioner appointed agent of insurer for service of process.

loss, catastrophe or other insurance, upon a subject of insurance resident, located or to be performed within this state, other than insurance procured through a surplus line agent pursuant to the surplus line insurance law of this state or exempted from such law under section 201, shall within thirty (30) days after the date such insurance was so procured, continued, or renewed, file a written report of the same with the commissioner on forms designated by the commissioner and furnished to such an insured upon request. The report shall show the name and address of the insured or insureds, name and address of the insurer, the subject of the insurance, a general description of the coverage, the amount of premium currently charged therefor, and such additional pertinent information as is reasonably requested by the commissioner. If any such insurance covers also subject of insurance resident, located or to be performed outside this state a proper pro rata portion of the entire premium payable for all such insurance shall be allocated as to the subjects of insurance resident, located or to be performed in this state, for the purposes of this section.

Written report.

Independently procured coverages defined.

(2) Any insurance in an unauthorized insurer procured through negotiations or an application in whole or in part occurring or made within or from within this state, or for which premiums in whole or in part are remitted directly or indirectly from within this state, shall be deemed to be insurance procured, or continued or renewed in this state within the intent of subsection (1) above.

Rate of tax.

(3) For the general support of the government of this state there is levied upon the obligation, chose in action, or right represented by the premium charged or payable for such insurance, a tax at the rate of two (2%) percent of the gross amount of such premium. The insured shall withhold the amount of the tax from the amount of premium charged by and otherwise payable to the insurer for such insurance, and within thirty (30) days after the insurance was so procured, continued or renewed, and coincidentally with the filing with the commissioner of the report provided for in subsection (1) above, the insured shall pay the amount of the tax to the state treasurer through the commissioner.

(4) If the insured fails to withhold from the premium the amount of tax herein levied, the insured shall be liable for the amount thereof and shall pay the same to the commissioner within the time stated in subsection (3) above.

Insured's liability for tax.

(5) The tax imposed hereunder if delinquent shall bear interest at the rate of six (6%) percent per annum, compounded annually.

Interest.

(6) The tax shall be collectible from the insured by civil action brought by the commissioner.

Tax collectible by civil action.

(7) This section does not abrogate or modify, and shall not be construed or deemed to abrogate or modify, any provision of section 176 (representing or aiding unauthorized insurers prohibited) or 177 (suits by unauthorized insurers prohibited), or any other provision of this code.

(8) This section does not apply as to life or disability insurances:

Exemption—life or disability.

CHAPTER 10—TRADE PRACTICES AND FRAUDS

Section 203. **Purposes of trade practices law.** The purpose of sections 203 through 217 is to regulate trade practices in the business of insurance in accordance with the intent of Congress as expressed in the Act of Congress of March 9, 1945 (Public Law 15, 79th Congress (ch. 20, 50 U.S. Stat. at Large 33)), by defining, or providing for determination of, all such practices in this state which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined.

Trade practices law—purposes.

Section 204. **Unfair methods, deceptive acts prohibited.** No person shall engage in this state in any trade practice which is defined in this chapter as, or determined pursuant to this chapter to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

Unfair method, deceptive acts prohibited.

Section 205. **Misrepresentation, false advertising of policies.** No person shall make, issue, circulate, or cause to be made, issued, or circulated, any estimate, circular, or statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages

Misrepresentation, false advertising prohibited.

promised thereby or the dividends or share of the surplus to be received thereon, or make any false or misleading statement as to the dividends or share of surplus previously paid on similar policies, or make any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates, or use any name or title of any policy or class of policies misrepresenting the true nature thereof.

False information prohibited.

Section 206. **False information, advertising.** No person shall make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business, which is untrue, deceptive or misleading.

"Twisting" prohibited.

Section 207. **"Twisting" prohibited.** No person shall make or issue, or cause to be made or issued, any written or oral statement misrepresenting or making incomplete comparisons as to the terms, conditions, or benefits contained in any policy for the purpose of inducing or attempting or tending to induce the policyholder to lapse, forfeit, surrender, retain, exchange or convert any insurance policy.

False financial statements prohibited.

Section 208. **False financial statements.** (1) No person shall file with any supervisory or other public official, or make, publish, disseminate, circulate or deliver to any person, or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of financial condition of an insurer with intent to deceive.

False entries prohibited.

(2) No person shall make any false entry in any book, report or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom such insurer is required by law

to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, wilfully omit to make a true entry of any material fact pertaining to the business of such insurer in any book, report or statement of such insurer.

Section 209. **Defamation.** No person shall make, publish, disseminate, or circulate, directly or indirectly, or aid, abet or encourage the making, publishing, disseminating or circulating of any oral or written statement or any pamphlet, circular, article or literature which is false, or maliciously critical of or derogatory to the financial condition of an insurer, or of an organization proposing to become an insurer, and which is calculated to injure any person engaged or proposing to engage in the business of insurance.

Defamation prohibited.

Section 210. **Boycott, coercion and intimidation.** No person shall enter into any agreement to commit, or by any concerted action commit, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance.

Boycott, coercion, intimidation prohibited.

Section 211. **Unfair discrimination—Life insurance, annuities, and disability insurance.** (1) No person shall make or permit any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.

Unfair discrimination prohibited—life insurance.

(2) No person shall make or permit any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of disability insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever.

Section 212. **Rebates—Life, disability and annuity contracts.** Except as otherwise expressly provided by law, no person shall knowingly permit or offer to make or make any contract of life insurance, life annuity or disability insurance, or agreement as to such contract

Illegal rebates and inducements.

other than as plainly expressed in the contract issued thereon, or pay or allow, or give or offer to pay, allow, or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any paid employment or contract for services of any kind, or any valuable consideration or inducement whatever not specified in the contract; or directly or indirectly give, or sell, or purchase or offer or agree to give, sell, purchase, or allow as inducement to such insurance or annuity or in connection therewith, and whether or not to be specified in the policy or contract, any agreement of any form or nature promising returns and profits, or any stocks, bonds, or other securities, or interest present or contingent therein or as measured thereby, of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued or to accrue thereon; or offer, promise or give anything of value whatsoever not specified in the contract.

Exceptions.

Section 213. **Exceptions to discrimination, rebates provision—Life, disability, and annuity contracts.** Nothing in sections 211 and 212 shall be construed as including within the definition of discrimination or rebates any of the following practices:

Bonuses paid out of surplus.

(1) In the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, provided that any such bonuses, or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the insurer.

Savings effected in collection expense.

(2) In the case of life insurance policies issued on the industrial debit, pre-authorized check, bank draft, or similar plans, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer or by pre-authorized check, bank draft, or similar plans, in an amount which fairly represents the saving in collection expense.

Readjustment of group insurance rates.

(3) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experience

thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year.

(4) Reduction of premium rate for policies of large amount, but not exceeding savings in issuance and administration expenses reasonably attributable to such policies as compared with policies of similar plan issued in smaller amounts.

Reduced rate for policies of large amount.

(5) Issuing life or disability insurance policies on a salary savings or payroll deduction plan at reduced rate reasonably commensurate with the savings made by the use of such plan.

Deduction plans.

Section 214. **Unfair discrimination, rebates prohibited—Property, casualty, surety insurances.** (1) No property, casualty or surety insurer or any employee or representative thereof, and no agent, or solicitor shall pay, allow, or give, or offer to pay, allow or give, directly or indirectly, as an inducement to insurance, or after insurance has been effected, any rebate, discount, abatement, credit or reduction of the premium named in the policy of insurance, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever, not specified in the policy, except to the extent provided for in an applicable filing with the commissioner as provided by law.

Unfair discrimination, rebates prohibited—property, casualty, surety insurance.

(2) No insured named in a policy, nor any employee of such insured shall knowingly receive or accept directly or indirectly, any such rebate, discount, abatement, credit or reduction of premium, or any such special favor or advantage or valuable consideration or inducement.

Acceptance by insured prohibited.

(3) No such insurer shall make or permit any unfair discrimination between insureds or property having like insuring or risk characteristics, in the premium or rates charged for insurance, or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the insurance.

(4) Nothing in this section shall be construed as prohibiting the payment of commissions or other compensation to duly licensed agents, or solicitors, or as prohibiting any insurer from allowing or returning to its

Exceptions, payment of commissions, dividends, savings.

participating policyholders, members or subscribers, lawful dividends, savings or unabsorbed premium deposits.

Stock as
inducement
prohibited.

Section 215. **Stock operations and advisory board contracts.** No person shall issue or deliver or permit its agents, officers, or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common law corporation, or any advisory board contract or other similar contract of any kind promising returns and profits as an inducement to insurance.

Enforcement
of prohibited
practices—
desist orders.

Section 216. **Desist orders for prohibited practices.** (1) If, after a hearing thereon of which notice of such hearing and of the charges against him were given such person, the commissioner finds that any person in this state has engaged or is engaging in any act or practice defined in or prohibited under this chapter, the commissioner shall order such person to desist from such acts or practices.

Hearing
after notice.

Appeal.

(2) Such desist order shall become final upon expiration of the time allowed for appeals from the commissioner's orders, if no such appeal is taken, or, in event of such an appeal, upon final decision of the court if the court affirms the commissioner's order or dismisses the appeal. An intervenor in such hearing shall have the right to appeal as provided in section 217 (3).

Order of court.

(3) In event of such an appeal, to the extent that the commissioner's order is affirmed the court shall issue its own order commanding obedience to the terms of the commissioner's order.

Liability.

(4) No order of the commissioner pursuant to this section or order of court to enforce it shall in any way relieve or absolve any person affected by such order from any other liability, penalty, or forfeiture under law.

Violation.

(5) Violation of any such desist order shall be deemed to be and shall be punishable as a violation of this code.

Penalties.

(6) This section shall not be deemed to affect or prevent the imposition of any penalty provided by this code or by other law for violation of any other provision of this chapter, whether or not any such hearing is called or held or such desist order issued.

Section 217. **Procedures as to undefined practices.**

Procedure—
undefined
practices.

(1) If the commissioner believes that any person engaged in the insurance business is engaging in this state in any method of competition or in any act or practice in the conduct of such business which is not defined in this chapter, but that such method of competition is unfair or that such act or practice is unfair or deceptive and that a proceeding by him in respect thereto would be in the public interest, he shall, after a hearing of which notice of the hearing and of the charges against him are given such person, make a written report of his findings of fact relative to such charges and serve a copy thereof upon such person and any intervenor at the hearing.

Hearing
after notice.

(2) If such report charges a violation of this chapter and if such method of competition, act or practice has not been discontinued, the commissioner may, through the attorney general of this state, at any time after the service of such report cause an action to be instituted to enjoin and restrain such person from engaging in such method, act, or practice. In such action the court may grant a restraining order or injunction upon such terms as may be just; but the people of this state shall not be required to give security before the issuance of any such order or injunction. If a stenographic record of the proceedings in the hearing before the commissioner was made, a certified transcript thereof including all evidence taken and the report and findings shall be received in evidence in such action.

Enforcement.

Injunction.

Evidence.

(3) If the commissioner's report made under subsection (1) above, or order on hearing made under section 216 does not charge a violation of this chapter, then any intervenor in the proceedings may appeal therefrom within the time and in the manner provided in this code for appeals from the commissioner generally.

Appeal.

Section 218. **Favored agent or insurer.** No person shall require as a condition precedent to loaning money upon the security of any real or personal property, or to the selling of any such property under contract, that the owner of the property to whom the money is to be loaned or the vendee of the property so being sold, shall place, continue, or renew any policy of insurance covering or to cover such property, or covering any liability related

Placing of
insurance as
inducement
for loan
prohibited.

to such property or the use thereof, through a particular insurance agent or in a particular insurer; except, that this provision shall not prevent the reasonable exercise by any such lender or vendor of the right to approve or disapprove of the insurer selected to underwrite the insurance.

Interlocking
ownership,
management.

Section 219. Interlocking ownership, management.

(1) Any insurer may retain, invest in or acquire the whole or any part of the capital stock of any other insurer or insurers, or have a common management with any other insurer or insurers, unless such retention, investment, acquisition or common management is inconsistent with any other provision of this code, or unless by reason thereof the business of such insurers with the public is conducted in a manner which substantially lessens competition generally in the insurance business or tends to create a monopoly therein.

(2) Any person otherwise qualified may be director of two or more insurers which are competitors, unless the effect thereof is to lessen substantially competition between insurers generally or tends materially to create a monopoly.

Political
contributions
prohibited.

Section 220. Political contributions prohibited; penalty. (1) No insurer shall directly or indirectly pay or use or offer, consent, or agree to pay, or use any money or property for or in aid of any political party, committee, or organization, or for or in aid of any corporation, or other body organized or maintained for political purposes, or for or in aid of any candidate for political office, or for nomination for such office, or for any political purpose whatsoever, or for the reimbursement or indemnification of any person for money or property so used.

Penalty.

(2) Any officer, director, stockholder, attorney, or agent of any insurer which violates any of the provisions of this section, who participates in, aids, abets, or advises, or consents to any such violation, and any person who solicits or knowingly receives any money or property in violation of this section, shall be guilty of a misdemeanor, and be punished by imprisonment for not more than one year and a fine of not more than one thousand dollars (\$1,000); and any officer or director aiding or

abetting in any contribution made in violation of this section shall be liable to the insurer for the amount so contributed.

Section 221. Illegal dealing in premiums; improper charges for insurance. (1) No person shall wilfully collect any sum as premium or charge for insurance, which insurance is not then provided or is not in due course to be provided (subject to acceptance of the risk by the insurer) by an insurance policy issued by an insurer as authorized by this code.

Illegal dealing
in premiums.

(2) No person shall wilfully collect as premium or charge for insurance any sum in excess of or less than the premium or charge applicable to such insurance, and as specified in the policy, in accordance with the applicable classifications and rates as filed with and approved by the commissioner; or, in cases where classifications, premiums, or rates are not required by this code to be so filed and approved, such premiums and charges shall not be in excess of or less than those specified in the policy and as fixed by the insurer. This provision shall not be deemed to prohibit the charging and collection, by surplus line agents licensed under chapter 9 of this code, of the amount of applicable state and federal taxes in addition to the premium required by the insurer. Nor shall it be deemed to prohibit the charging and collection, by a life insurer, of amounts actually to be expended for medical examination of an applicant for life insurance or for reinstatement of a life insurance policy.

Improper charges
for insurance.

(3) Each violation of this section shall be punishable under section 17 of this code (general penalty).

Violation.

Section 222. Fictitious groups. (1) No insurer, whether an authorized insurer or an unauthorized insurer, shall make available through any rating plan or form, property, casualty or surety insurance to any firm, corporation, or association of individuals, any preferred rate or premium based upon any fictitious group of such firm, corporation, or association of individuals.

Preferred rates
for fictitious
groups prohibited.

(2) No form or plan of insurance covering any group or combination of persons or risks shall be written or delivered within or outside this state to cover persons or risks in this state at any preferred rate or on any form

Approval of
commissioner
for group plans
required.

other than as offered to persons not in such group or combination and to the public generally, unless such form, plan of insurance, and the rates or premiums to be charged therefor have been submitted to and approved by the commissioner as being not unfairly discriminatory, and as not otherwise being in conflict with subsection (1) above or with any provision of chapter 11 of this code (rates and rating organization) to the extent that such chapter 11 is, by its terms, applicable thereto.

Exceptions, life, disability, annuity contracts. (3) This section does not apply to life insurance, disability insurance, or annuity contracts.

Prohibited relations with mortuaries. Section 223. **Prohibited relations with mortuaries.** (1) No life insurer shall own, manage, supervise, operate, or maintain any mortuary, funeral, or undertaking establishment, or permit its officers, employees, or representatives to own, operate, maintain or be employed in any such business.

(2) No life insurer shall contract or agree with any funeral director, mortuary, or undertaker to the effect that such funeral director, undertaker, or mortuary shall conduct the funeral of any person insured by such insurer.

Penalty. (3) Each violation of this section shall constitute a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000), or by imprisonment at hard labor for not more than six (6) months, or both such fine and imprisonment in the discretion of the court.

False applications, claims, proofs of loss—penalty. Section 224. **False applications, claims, proofs of loss; penalty.** Any solicitor, agent, examining physician, applicant, or other person, who knowingly or wilfully makes any false or fraudulent statement or representation in or with reference to any application for insurance; or for the purpose of obtaining any money or benefit, knowingly or wilfully presents or causes to be presented a false or fraudulent claim; or any proof in support of such a claim for the payment of the loss upon a contract of insurance; or prepares, makes, or subscribes a false or fraudulent account, certificate, affidavit or proof of loss, or other document or writing, with intent that the same may be presented or used in support of such a claim, shall be guilty of a misdemeanor, and, upon

conviction, shall be punished by a fine of not less than two hundred and fifty dollars (\$250) or more than one thousand dollars (\$1,000) or by imprisonment in the county jail for not less than three (3) months or more than six (6) months, or both such fine and imprisonment at the discretion of the court.

CHAPTER 11 — RATES AND RATING ORGANIZATIONS

Section 225. **Purpose of chapter; interpretation.** The purpose of this chapter is to promote the public welfare by regulating insurance rates to the end that they shall not be excessive, inadequate or unfairly discriminatory, and to authorize and regulate cooperative action among insurers in rate making and in other matters within the scope of this chapter. Nothing in this chapter is intended:

Purpose to fairly regulate insurance rates.

(1) To prohibit or discourage reasonable competition, or

(2) Prohibit or encourage, except to the extent necessary to accomplish the aforementioned purpose, uniformity in insurance rates, rating systems, rating plans or practices. This chapter shall be liberally interpreted to carry into effect the provisions of this section.

Section 226. **Scope of chapter.** This chapter applies to all insurers and all kinds of insurance, except that nothing contained in this chapter shall apply to:

Applies to all insurers except life, disability, reinsurance, aircraft, marine, title.

(1) Life insurance.

(2) Disability insurance.

(3) Reinsurance, except joint reinsurance as provided in section 250 of this chapter.

(4) Insurance against loss of or damage to aircraft, their hulls, accessories and equipment, or against liability, other than workmen's compensation and employers' liability, arising out of the ownership, maintenance or use of aircraft.

(5) Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies.

(6) Title insurance.

Rate making
bases and
standards.

Section 227. **Rate making bases and standards.** (1) All rates shall be made in accordance with the following provisions:

Loss experience,
catastrophe
hazards,
dividends, savings,
premium deposits,
expenses and all
relevant factors.

(a) Due consideration shall be given to past and prospective loss experience within and outside this state, to catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers, to past and prospective expenses both countrywide and those specially applicable to this state, and to all other relevant factors within and outside this state.

Fair rates.

(b) Rates shall not be excessive, inadequate or unfairly discriminatory.

Rates—
casualty
insurance.

(c) Rates for casualty insurance to which this chapter applies shall also be subject to the following provisions:

Different
expenses.

(i) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any such insurer or group with respect to any kind of insurance, or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable.

Classification
rates.

(ii) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses.

Rates—
property,
marine,
inland marine
insurance.

(d) Rates for property, marine and inland marine insurance to which this chapter applies shall also be subject to the following provisions:

(i) Manual, minimum, class rates, rating schedules

or rating plans, shall be made and adopted, except in the case of specific inland marine rates on risks specially rated.

Exception—
specially rated
inland marine
risks.

(ii) Due consideration shall be given to the conflagration and catastrophe hazards, and in the case of fire insurance rates consideration shall be given to the experience of the fire insurance business during a period of not less than the most recent five-year period for which such experience is available.

Conflagration
and catastrophe
hazards—fire loss
experience.

(2) Except to the extent necessary to meet the provisions of subdivisions (b) of this section, uniformity among insurers in any matters within the scope of this section is neither required nor prohibited.

Uniformity
not required.

(3) Rates made in accordance with this section may be used subject to the provisions of this chapter.

Rates may
be used.

Section 228. **Rate filings required.** (1) Every rating bureau shall file with the commissioner every manual of classifications, rules and rates, every rating plan and every modification of any of the foregoing which it proposes to use for casualty insurance to which this chapter applies.

Rate filings
required—
by rating
bureaus.

(2) Every insurer shall file with the commissioner, except as to inland marine risks which by general custom of the business are not written according to manual rates or rating plans, every manual, minimum, class rate, rating schedule or rating plan and every other rating rule, and every modification of any of the foregoing which it proposes to use for fire (except fire on motor vehicles written by casualty insurers), marine and inland marine insurance to which this chapter applies. Specific inland marine rates on risks specially rated, made by a rating organization, shall be filed with the commissioner.

Rate filings
by insurers.

(3) Every such filing shall state the proposed effective date thereof, and shall indicate the character and extent of the coverage contemplated. When a filing is not accompanied by the information upon which the insurer supports such filing, and the commissioner does not have sufficient information to determine whether such filing meets the requirements of this chapter, he shall require such insurer to furnish the information upon which it supports such filing, and in such event the

Filing based on
information.

waiting period shall commence as of the date such information is furnished. The information furnished in support of a filing may include:

- (a) The experience or judgment of the insurer or rating organization making the filing;
- (b) Its interpretation of any statistical data it relies upon;
- (c) The experience of other insurers or rating organizations; or
- (d) Any other relevant factors.

A filing and any supporting information shall be open to public inspection after the filing becomes effective.

Section 229. **Filings may be made by bureau.** An insurer may satisfy its obligation to make the filings referred to in section 228 by becoming a member of, or a subscriber to, a licensed rating organization which makes such filings, and by authorizing the commissioner to accept such filings on its behalf; but nothing contained in this chapter shall be construed as requiring any insurer to become a member of or a subscriber to any rating organization.

Section 230. **Exemption from filing.** Under such rules and regulations as he shall adopt the commissioner may, by written order, suspend or modify the requirement of filing as to any kind of insurance, subdivision or combination thereof, or as to classes of risks, the rates for which cannot practicably be filed before they are used. Such orders, rules and regulations shall be made known to insurers and rating organizations affected thereby. The commissioner may make such examination as he may deem advisable to ascertain whether any rates affected by such order are excessive, inadequate or unfairly discriminatory.

Section 231. **Effective date of filing.** (1) The commissioner shall review filings as soon as reasonably possible after they have been made in order to determine whether they meet the requirements of this chapter.

- (2) Subject to the exceptions specified in subsections (3) and (4) of this section, each filing shall be on file

Rate filings made by bureau in lieu of filing by member.

Commissioner may suspend or modify requirement of filing.

Procedure.

Waiting period—effective date.

for a waiting period of fifteen (15) days before it becomes effective, which period may be extended by the commissioner for an additional period not to exceed fifteen (15) days if he gives written notice within such waiting period to the insurer or rating organization which made the filing that he needs such additional time for the consideration of such filing. Upon written application by such insurer or rating organization, the commissioner may authorize a filing which he has reviewed to become effective before the expiration of the waiting period or any extension thereof. A filing shall be deemed to meet the requirements of this chapter unless disapproved by the commissioner within the waiting period or any extension thereof.

- (3) Specific inland marine rates on risks specially rated by a rating organization shall become effective when filed and shall be deemed to meet the requirements of this chapter until such time as the commissioner reviews the filing and so long thereafter as the filing remains in effect.

Specific inland marine rates effective on filing.

- (4) Any special filing with respect to a surety or guaranty bond required by law or by court or executive order or by order, rule or regulation of a public body, not covered by a previous filing, shall become effective when filed and shall be deemed to meet the requirements of this chapter until such time as the commissioner reviews the filing and so long thereafter as the filing remains in effect.

Special filings effective when filed.

Section 232. **Disapproval of filing within waiting period.** (1) If within the waiting period or any extension thereof as provided in section 231 (2), the commissioner finds that a filing does not meet the requirements of this chapter, he shall send to the insurer or rating organization which made such filing, written notice of disapproval of such filing specifying therein in what respects he finds such filing fails to meet the requirements of this chapter and stating such filing shall not become effective.

Disapproval of filing within waiting period.

- (2) If within thirty (30) days after a specific inland marine rate on a risk specially rated by a rating organization subject to section 231 (3) has become effective, or if within thirty (30) days after a special surety or

Notice of disapproval of special inland marine filing.

guaranty filing subject to section 231 (4) has become effective, the commissioner finds that such filing does not meet the requirements of this chapter, he shall send to the insurer or rating organization which made such filing written notice of disapproval of such filing specifying therein in what respects he finds that such filing fails to meet the requirements of this chapter and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. The disapproval shall not affect any contract made or issued prior to the expiration of the period set forth in the notice.

Subsequent
disapproval
of filing.

Section 233. **Subsequent disapproval of filing.** If at any time subsequent to the applicable review period provided for in section 232 the commissioner finds that a filing or rate does not meet the requirements of this chapter, he shall, after a hearing held upon not less than twenty (20) days' written notice, specifying the matters to be considered at such hearing, to every insurer and rating organization which made such filing, issue an order specifying in what respects he finds that such filing fails to meet the requirements of this chapter and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. Copies of the order shall be sent to every such insurer and rating organization. Such order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

Hearing
after notice.

Order
specifying
defects.

Limitation
of disapproval
power.

Section 234. **Limitation of disapproval power.** No manual of classification, rules, rating plans, or any modification of any of the foregoing which establishes standards for measuring variations in hazards or expense provisions, or both, in the case of casualty and surety insurance to which this chapter applies, and no manual, minimum, class rate, rating schedule, rating plan or rating rule, or any modification of the foregoing, in the case of property insurance to which this chapter applies, and which has been filed pursuant to the requirements of this chapter shall be disapproved if the rates produced meet the requirements of this chapter.

Excess rates on
specific risks.

Section 235. **Excess rates.** Upon the written application of the insured, stating his reasons therefor, filed with and approved by the commissioner, a rate in excess

of that provided by a filing otherwise applicable may be used on any specific risk.

Section 236. **Discriminatory, inadequate rates prohibited.** No insurer making its own rates subject to the provisions of this chapter nor any rating bureau shall fix or charge any rate for insurance upon property in this state which discriminates unfairly between risks in the application of like charges and credits or which discriminates unfairly between risks of essentially the same hazard and having substantially the same degree of protection, nor shall any rate be such as to endanger the solvency of such insurer.

Discriminatory,
inadequate rates
prohibited.

Section 237. **Commissioner's power to correct improper rates; interpretation of rate standard.** The commissioner shall have the power at any time on written petition or upon his own motion to review any rate fixed by any insurer making its own rates or by any rating bureau for insurance upon property within this state, for the purpose of determining whether the same is excessive, inadequate or unfairly discriminatory. He shall have the power and authority to order the excessive, inadequate or discriminatory rate removed and fix and order a rate in lieu of the rate made by any such insurer or the bureau rate found to be excessive, inadequate or unfairly discriminatory, and the rate so ordered and fixed shall become the established rate. No rate shall be held to be excessive, inadequate or unfairly discriminatory if the commissioner finds that free competition exists in the area and classification covered by such rate. No rate shall be held to be inadequate unless the commissioner finds that the continued use of such rate shall endanger the solvency of the insurer charging such rate.

Power to correct
improper rates.

Interpretation of
rate standard.

Section 238. **Rate bureau defined and authorized.** Subject to the provisions of this chapter, two (2) or more admitted insurers, not members of a "group" as referred to in section 248, may act in concert with each other and with others with respect to all matters pertaining to the making of rates, rating plans or rating systems or in the preparation or making of insurance policy or bond forms, underwriting rules, surveys, inspections and investigations or the furnishing of loss or expense statistics or other information and data, or

Concerted action
in rate making.

carrying on of research and shall be known as a rating bureau. No insurer or "group" shall be deemed to be a rating organization.

Rate bureaus—
procedure
for licensing.

Section 239. **Rate bureaus—Licensing.** (1) Any corporation, unincorporated association, partnership, or individual, whether located within or outside this state, may make application for and obtain a license as a rating organization. To obtain such a license the applicant shall file with the commissioner:

(a) A copy of its constitution, its articles of agreement or association or its certificate of incorporation, and of its bylaws, rules and regulations governing the conduct of its business;

(b) A list of its members and subscribers;

(c) The name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting such rating organization may be served; and

(d) A statement of its qualifications as a rating organization.

If the commissioner finds that the applicant meets the licensing requirements of this chapter applicable to it and is trustworthy and competent to act as a rating organization he shall issue a license.

Continuation
of license.

(2) Licenses issued pursuant to this section shall remain in effect for three (3) years unless sooner suspended or revoked by the commissioner. The fee for the license shall be twenty-five dollars (\$25). Such license fee shall be in lieu of all other fees, licenses or taxes to which the rating organization might otherwise be subject.

Rating bureau
obligations and
limitations.

Section 240. **Bureau obligations, limitations as to insurers, members, and subscribers.** A rating organization shall:

(1) Permit any authorized insurer or "group" to obtain and use at its option such rating organizations' rates and rating manuals at a reasonable cost without discrimination and without any requirement to become a member or subscriber;

(2) Permit any authorized insurer or "group" to become a member of or a subscriber to such rating organization or withdraw therefrom;

(3) Neither have nor adopt any rule or exact any agreement, the effect of which would be to require as a condition to membership or subscription that any member or subscriber shall adhere to its rates, rating plans or rating systems;

(4) Neither adopt any rule or exact any agreement the effect of which would be to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers. A plan for the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers shall not be deemed to be a rating plan or system.

Section 241. **Notice of changes.** Every rating organization shall notify the commissioner promptly of every change in:

Duties of rating
bureau to give
notice of
changes.

(1) Its constitution, its articles of agreement or association, or its certificate of incorporation, and its bylaws, rules and regulations governing the conduct of its business;

(2) Its list of members and subscribers; and

(3) The name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such rating organization may be served.

Section 242. **Technical services.** Any rating organization may subscribe for or purchase actuarial, technical or other services, and such services shall be available to all members and subscribers without discrimination.

Use of technical
services.

Section 243. **Stamping bureau.** Any fire and marine insurance rating organization may provide for the examination of policies, daily reports, binders, renewal certificates, endorsements or other evidences of insurance, or the cancellation thereof and may make reasonable rules governing their submission. Such rules shall contain a

Stamping bureau.

provision that in the event any insurer does not within sixty (60) days furnish satisfactory evidence to the rating organization of the correction of any error or omission previously called to its attention by the rating organization, it shall be the duty of the rating organization to notify the commissioner thereof. All information so submitted for examination shall be confidential.

Adherence
to filings.

Section 244. **Adherence to filings; precedence as between filings.** As to coverages which are subject to rate filings made under this chapter the insurer shall adhere to and comply with its currently applicable filings and rates.

Procedure—
filing of
deviated rates.

Section 245. **Deviations.** (1) Every member of or subscriber to a rating organization shall adhere to the filings made on its behalf by such organization except that:

(a) In the case of casualty insurance to which this chapter applies any such insurer may make written application to the commissioner for permission to file a uniform percentage decrease or increase to be applied to the premiums produced by the rating system so filed for a kind of insurance, or for a class of insurance which is found by the commissioner to be a proper rating unit for the application of such uniform percentage decrease or increase, or for a subdivision of a kind of insurance (i) comprised of a group of manual classifications which is treated as a separate unit for rate making purposes, or (ii) for which separate expense provisions are included in the filings of the rating organization. Such application shall specify the basis for the modification and shall be accompanied by the data upon which the applicant relies. A copy of the application and data shall be sent simultaneously to such rating organization; and

(b) In the case of fire, marine, and inland marine insurance to which this chapter applies every insurer may make written application to the commissioner for permission to file a deviation from the class rates, schedules, rating plans or rules respecting any kind of insurance, or class of risk within a kind of insurance or combination thereof. Such application shall specify the basis for the deviation and a copy thereof shall be sent simultaneously to such rating organization.

(2) The commissioner shall set a time and place for a hearing on such application at which the insurer and such rating organization may be heard and shall give them not less than ten (10) days' written notice thereof. In the event the commissioner is advised by the rating organization that it does not desire a hearing he may, upon the consent of the applicant, waive such hearing. In considering the application for permission to file such deviation in the case of fire, marine and inland marine insurance, the commissioner shall give consideration to the available statistics and the principles for rate making as provided in section 227. The commissioner shall issue an order permitting the modification for such insurer to be filed if he finds it to be justified and it shall thereupon become effective. He shall issue an order denying such application if he finds that the modification is not justified or that the resulting premiums would be excessive, inadequate or unfairly discriminatory. Each deviation permitted to be filed shall be effective for a period of one (1) year from date of such permission unless terminated sooner with the approval of the commissioner.

Hearing
after notice.

Waiver
of hearing.

Order allowing
modification.

Effective date
of filing.

Section 246. **Information, filings from rating organizations.** The commissioner may in his discretion address inquiries to any individual, association or bureau which is or has been engaged in making rates or estimates for rates as provided for in this chapter in relation to its organization, maintenance, or operation, or any other matter connected with its transactions and shall require the filing of schedules, rates, forms, rules, regulations, and other information; and it shall be the duty of every such individual, association or bureau, or some officer thereof, to promptly make such filing and reply to such inquiries in writing.

Duties of bureau
to inform
commissioner.

Section 247. **Inspections and surveys.** Every insurer and rating bureau engaged in making rates or estimates for rates on property in this state shall inspect every risk specially rated by it on schedule and make a written survey of the risk, which shall be filed as a permanent record in the office of the insurer or bureau. A copy of this survey shall be furnished to the owner of the property upon request.

Inspections
and surveys.

Insurer "groups" defined.

Section 248. **Insurer "groups"; right to use same rates.** Two or more insurers who are not members of or subscribers to a rating organization and who by virtue of their business association in the United States represent themselves to be or are customarily known as a "group," or similar insurance trade designation, shall have the right to use the same rates for each such insurer subject to the provisions of this chapter; and nothing contained in this chapter shall be construed to prohibit an agreement to make or use the same rates and concerted actions in connection with such rates by such insurers.

Right to use rates.

Advisory organizations defined.

Section 249. **Advisory organizations.** (1) Every group, association or other organization of insurers, whether located within or outside this state, which assists insurers which make their own filings or rating organizations in rate making, by the collection and furnishing of loss or expense statistics, or by the submission of recommendations, but which does not make filings under this chapter, shall be known as an advisory organization.

Required filings.

(2) Every advisory organization shall file with the commissioner (a) a copy of its constitution, its articles of agreement or association or its certificate of incorporation and of its bylaws, rules and regulations governing its activities, (b) a list of its members, (c) the name and address of a resident of this state upon whom notices or orders of the commissioner or process issued at his direction may be served, and (d) an agreement that the commissioner may examine such advisory organization in accordance with the provisions of section 251.

Hearing and determination.

(3) If, after a hearing, the commissioner finds that the furnishing of such information or assistance involves any act or practice which is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter he may issue a written order specifying in what respects such act or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, and requiring the discontinuance of such act or practice.

Use of recommendations of unauthorized advisory organization prohibited.

(4) No insurer which makes its own filings nor any rating organization shall support its filings by statistics or adopt rate making recommendations, furnished to it by an advisory organization which has not complied with

this section or with an order of the commissioner involving such statistics or recommendations issued under subsection (3) of this section. If the commissioner finds such insurer or rating organization to be in violation of this subsection he may issue an order requiring the discontinuance of such violation.

Section 250. **Joint underwriting and joint reinsurance.** (1) Every group, association or other organization of insurers which engages in joint underwriting or joint reinsurance, shall be subject to regulation with respect thereto as herein provided, subject, however, with respect to joint underwriting, to all other provisions of this chapter, and, with respect to joint reinsurance, to section 251.

Joint underwriting and joint reinsurance subject to regulation.

(2) If, after a hearing, the commissioner finds that any activity or practice of any such group, association or other organization is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, he may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter and requiring the discontinuance of such activity or practice.

Hearing—order.

Section 251. **Examination of rating bureaus, advisory organizations, joint underwriters and joint reinsurers.** The commissioner shall have the power to examine any such rating bureau, advisory organization, joint underwriters, and joint reinsurers as often as he deems it expedient to do so and shall do so not less than once every three (3) years. A report thereof shall be filed in his office. The commissioner may waive such examination upon the filing with him of a report of an examination made by some other insurance department or proper supervising officer within the three (3) years. The cost of such examination shall be borne by the person so examined. A statement in regard to such examination shall be made in the annual report of the commissioner.

Power of commissioner to examine rating bureaus, advisory organizations, joint underwriters and joint reinsurers.

Section 252. **Dividends not to be regulated.** Nothing in this chapter shall be construed to prohibit or regulate the payment of dividends, savings, or unabsorbed pre-

Dividends not regulated.

mium deposits allowed or returned by insurers to their policyholders, members or subscribers.

Power of commissioner to regulate interchange of data.

Section 253. **Interchange of rating plan data; consultation; cooperative action in rate making.** (1) Reasonable rules and plans may be promulgated by the commissioner for the interchange of data necessary for the application of rating plans.

Interchange to further uniformity.

(2) In order to further uniform administration of rate regulatory laws, the commissioner and every insurer and rating organization may exchange information and experience data with insurance supervisory officials, insurers and rating organizations in other states and may consult with them with respect to rate making and the application of rating systems.

Cooperation.

(3) Cooperation among rating organizations or among rating organizations and insurers in rate making or in other matters within the scope of this chapter is hereby authorized, provided the filings resulting from such cooperation are subject to all the provisions of this chapter which are applicable to filings generally. The commissioner may review such cooperative activities and practices and if, after a hearing, he finds that any such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, he may issue a written order specifying in what respects **such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter and requiring the discontinuance of such activity or practice.**

Assigned risk plan.

Section 254. **Assigned risk plan—Casualty and surety.** Agreements may be made among casualty and surety insurers with respect to the equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to but who are unable to procure such insurance through ordinary methods and such insurers may agree among themselves on the use of reasonable rate modification for such insurance, such agreements and rate modifications to be subject to the approval of the commissioner.

Penalty for giving false information.

Section 255. **False or misleading information.** No person shall wilfully withhold information from or know-

ingly give false or misleading information to the commissioner, any rating organization, or any insurer, which will affect the rates or premiums chargeable under this chapter. A violation of this section shall subject the one guilty of such violation to the penalties provided in section 17 of this code.

Section 256. **Appeal to commissioner as to filing.** Any person aggrieved with respect to any filing which is in effect may make written application to the commissioner for a hearing thereon, except, however, that the insurer or rating organization that made the filing shall not be authorized to proceed under this section. Such application shall specify the grounds to be relied upon by the applicant. If the commissioner finds that the application is made in good faith, that the applicant would be so aggrieved if his grounds are established, and that such grounds otherwise justify holding such a hearing, he shall, within thirty (30) days after receipt of such application, hold a hearing upon not less than ten (10) days' written notice to the applicant and to every insurer and rating organization which made such filing. If, after such hearing, the commissioner finds that the filing does not meet the requirements of this chapter, he shall issue an order specifying in what respects he finds that such filing fails to meet the requirements of this chapter, and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. Copies of the order shall be sent to the applicant and to every such insurer and rating organization. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

Procedure—
appeal to
commissioner.

Section 257. **Appeals from the commissioner.** Any person, insurer or rating organization aggrieved by any order or decision made by the commissioner under this chapter may appeal therefrom to the district court of the county where the aggrieved party may reside, or has his principal place of business in this state, or to the district court of Lewis and Clark County, Montana. The appeal shall be taken within thirty (30) days from the making and filing of the order or decision, by filing in the office of the commissioner a notice of the appeal in writing. The commissioner shall within twenty (20) days after filing of the notice, make and return to the

Procedure—
appeals from
commissioner
to district court.

Notice of appeal.

Transcript.

district court a full and complete certified transcript of the finding and order appealed from and of all parts relative thereto on file in his office, including the notice of appeal. Upon the filing of the certified transcript all matters involved therein shall be brought on for trial upon the merits at the next term of the court after the filing of the transcript, unless otherwise ordered by the court. Upon the trial the findings of fact on which the order is based shall be prima facie evidence of the matters therein stated. During the pendency of the proceedings upon review the order of the commissioner shall be suspended, but in the event of a final determination against any insurer, any overcharge by the insurer during review shall be refunded to the persons entitled thereto.

CHAPTER 12—THE INSURANCE CONTRACT

Section 258. **Scope of chapter.** This chapter shall not apply as to:

(1) Reinsurance.

(2) Policies or contracts not issued for delivery in this state nor delivered in this state, except as provided in section 271 (approval of forms for delivery in jurisdictions where local approval not provided for).

(3) Ocean marine and foreign trade insurances.

(4) Title insurance, except as to the following provisions:

(a) Section 267 (power to contract, etc.).

(b) Section 271 (filing, approval of forms).

(c) Section 272 (grounds for disapproval).

(d) Section 277 (charter, bylaw provisions).

(e) Section 278 (execution of policies).

(f) Section 282 (construction of policies).

"Policy" defined.

Section 259. **"Policy" defined.** "Policy" means the written contract of or written agreement for or effecting insurance, by whatever name called, and includes all clauses, riders, endorsements and papers attached thereto and a part thereof.

Section 260. **"Premium" defined.** "Premium" is the consideration for insurance, by whatever name called. Any "assessment," or any "membership," "policy," "survey," "inspection," "service" or similar fee or charge in consideration for an insurance contract is deemed part of the premium.

"Premium" defined.

Section 261. **Insurable interest, personal insurance.** (1) Any individual of competent legal capacity may procure or effect an insurance contract upon his own life or body for the benefit of any person. But no person shall procure or cause to be procured any insurance contract upon the life or body of another individual unless the benefits under such contract are payable to the individual insured or his personal representatives, or to a person having, at the time when such contract was made, an insurable interest in the individual insured.

Insurable interest required.

(2) If the beneficiary, assignee, or other payee under any contract made in violation of this section receives from the insurer any benefits thereunder accruing upon the death, disablement, or injury of the individual insured, the individual insured or his executor or administrator, as the case may be, may maintain an action to recover such benefits from the person so receiving them.

Action to recover benefits obtained where no insurable interest.

(3) "Insurable interest" with reference to personal insurance includes only interests as follows:

"Insurable interest" defined.

(a) In the case of individuals related closely by blood or by law, a substantial interest engendered by love and affection.

(b) In the case of other persons, a lawful and substantial economic interest in having the life, health, or bodily safety of the individual insured continue, as distinguished from an interest which would arise only by, or would be enhanced in value by, the death, disablement or injury of the individual insured.

(c) An individual heretofore or hereafter party to a contract or option for the purchase or sale of an interest in a business partnership or firm, or of shares of stock of a closed corporation or of an interest in such shares, has an insurable interest in the life of each individual party to such contract and for the purposes of such con-

tract only, in addition to any insurable interest which may otherwise exist as to the life of such individual.

Insurable
interest—
property.

Section 262. **Insurable interest, property.** (1) No contract of insurance of property or of any interest in property or arising from property shall be enforceable as to the insurance except for the benefit of persons having an insurable interest in the things insured as at the time of the loss.

Defined.

(2) "Insurable interest" as used in this section means any actual, lawful, and substantial economic interest in the safety or preservation of the subject of the insurance free from loss, destruction, or pecuniary damage or impairment.

Measure.

(3) The measure of an insurable interest in property is the extent to which the insured might be damnified by loss, injury, or impairment thereof.

Interest
of assured
in property
insurance.

Section 263. **Interest of named insured — Property insurance.** When the name of the person insured is specified in a policy insuring property the insurance can be applied only to his own proper interest.

Change of interest
in event of
death—
property
insurance.

Section 264. **Change of interest on death — Property insurance.** A change of interest, by will or succession, on the death of the insured, does not avoid an insurance of property and the insurance passes to the person taking his interest in the thing insured.

Transfers
of interest—
property.

Section 265. **Transfer of interest between joint insurers — Property insurance.** A transfer of interest by one of several partners, joint owners, or owners in common, who are jointly insured, to the others, does not avoid an insurance of property even though it has been agreed that the insurance shall cease upon an alienation of the thing insured.

Insurance
without interest,
or of wager,
is void.

Section 266. **Insurance without interest, or of wager, is void.**

(1) Every stipulation in a policy of insurance of property for the payment of loss without regard to absence of an insurable interest in such property on the part of the insured, or that the policy shall be received as proof of such interest, is void.

(2) Every policy executed by way of gaming or wagering is void.

Section 267. **Power to contract; purchase of insurance by minors.** (1) Any person of competent legal capacity may contract for insurance.

Power to contract
for insurance.

(2) Any minor of the age of fifteen (15) years or more, as determined by the nearest birthday, may, notwithstanding his minority, contract for annuities and for insurance upon his own life, body, health, property, liabilities or other interests, or on the person of another in whom the minor has an insurable interest. Such a minor shall, notwithstanding such minority, be deemed competent to exercise all rights and powers with respect to or under (a) any contract for annuity or for insurance upon his own life, body or health, or (b) any contract such minor affected upon his own property, liabilities or other interests, or on the person of another, as might be exercised by a person of full legal age, and may at any time surrender his interest in any such contracts and give valid discharge for any benefit accruing or money payable thereunder. Such a minor shall not, by reason of his minority, be entitled to rescind, avoid or repudiate the contract, nor to rescind, avoid or repudiate any exercise of a right or privilege thereunder, except that such a minor, not otherwise emancipated, shall not be bound by any unperformed agreement to pay by promissory note or otherwise, any premium on any such annuity or insurance contract.

Limitation
on age—
minors' rights.

(3) If any minor mentioned in subsection (2) above, is possessed of an estate that is being administered by a guardian, no such contract shall be binding upon the estate as to payment of premiums, except as and when consented to by the guardian and approved by the probate court of the county in which the administration of the estate is pending, and such consent and approval shall be required as to each annual premium payment.

Payment of
premiums from
minors' estates—
court approval.

(4) Any annuity contract or policy of life or disability insurance procured by or for a minor under subsection (2) above, shall be made payable either to the minor or his estate or to a person having an insurable interest in the life of the minor under section 261.

Limitation
on payment
of policy.

Applications
required—
life and
disability
insurance.

Section 268. **Application required — Life and disability insurance.** No life or disability insurance contract upon an individual, except a contract of group life insurance or of group or blanket disability insurance, shall be made or effectuated unless at the time of the making of the contract the individual insured, being of competent legal capacity to contract, applies therefor or has consented thereto in writing, except in the following cases:

(1) A spouse may effectuate such insurance upon the other spouse.

(2) Any person having an insurable interest in the life of a minor, or any person upon whom a minor is dependent for support and maintenance, may effectuate insurance upon the life of or pertaining to such minor.

(3) Family policies insuring any two or more members of a family may be issued on an application signed by either parent, a stepparent, or by a husband or wife.

Applications
as evidence—
life or disability.

Section 269. **Application as evidence; alteration of application.** (1) No application for the issuance of any life or disability insurance policy or annuity contract shall be admissible in evidence in any action relative to such policy or contract, unless a true copy of the application was attached to or otherwise made a part of the policy or contract when issued. This provision shall not apply to industrial life insurance policies.

Duty of insurer
to furnish copy
of application
on request—
effect of
non-compliance.

(2) If any policy of life or disability insurance delivered in this state is reinstated or renewed, and the insured or the beneficiary or assignee of the policy makes written request to the insurer for a copy of the application, if any, for such reinstatement or renewal, the insurer shall, within thirty (30) days after receipt of such request at its home office or at any of its branch offices, deliver, or mail to the person making such request a copy of such application. If such copy is not so delivered or mailed after having been so requested, the insurer shall be precluded from introducing the application in evidence in any action or proceeding based upon or involving the policy or its reinstatement or renewal. In the case of such request from a beneficiary, the time within which the insurer is required to furnish a copy of such application shall not begin to run until after receipt

of evidence satisfactory to the insurer of the beneficiary's vested interest in the policy or contract.

(3) As to kinds of insurance other than life or disability insurance, no application for insurance signed by or on behalf of the insured shall be admissible in evidence in any action between the insured and the insurer arising out of the policy so applied for, if the insurer has failed, at expiration of thirty (30) days after receipt by the insurer of written demand therefor by or on behalf of the insured, to furnish to the insured a copy of such application reproduced by any legible means.

Duty to furnish
copy of
application
for other than
life or disability
insurance.

(4) No alteration of any written application for any life or disability insurance policy shall be made by any person other than the applicant without his written consent, except that insertions may be made by the insurer, for administrative purposes only, in such manner as to indicate clearly that such insertions are not to be ascribed to the applicant.

Alterations
of application.

Section 270. **Representations in applications.** All statements and descriptions in any application for an insurance policy or annuity contract, or in negotiations therefor, by or in behalf of the insured or annuitant, shall be deemed to be representations and not warranties. Misrepresentations, omissions, concealment of facts, and incorrect statements shall not prevent a recovery under the policy or contract unless either:

Information
furnished
on application
deemed
representation—
not warranty.

Effect of
misrepresentations.

(a) Fraudulent; or

(b) Material either to the acceptance of the risk, or to the hazard assumed by the insurer; or

(c) The insurer in good faith would either not have issued the policy or contract, or would not have issued a policy or contract in as large an amount, or at the same premium or rate, or would not have provided coverage with respect to the hazard resulting in the loss, if the true facts had been made known to the insurer as required either by the application for the policy or contract or otherwise.

Section 271. **Filing, approval of forms.** (1) No basic insurance policy or annuity contract form, or application form where written application is required and is to

Filing and
approval of forms
by commissioner.

be made a part of the policy or contract, or printed rider or endorsement form or form of renewal certificate, shall be delivered, or issued for delivery in this state, unless the form has been filed with and approved by the commissioner. This provision shall not apply to surety bonds, or to specially rated inland marine risks, nor to policies, riders, endorsements, or form of unique character designed for and used with relation to insurance upon a particular subject, or which relate to the manner of distribution of benefits or to the reservation of rights and benefits under life or disability insurance policies and are used at the request of the individual policyholder, contract holder, or certificate holder. As to forms for use in property, marine (other than ocean marine and foreign trade coverages), casualty and surety insurance coverages the filing required by this subsection may be made by rating organizations on behalf of its members and subscribers; but this provision shall not be deemed to prohibit any such member or subscriber from filing any such forms on its own behalf.

Exceptions.

Filing by rating organizations.

Time for filing and approval.

(2) Every such filing shall be made not less than thirty (30) days in advance of any such delivery. At the expiration of such thirty (30) days the form so filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the commissioner. Approval of any such form by the commissioner shall constitute a waiver of any unexpired portion of such waiting period. The commissioner may extend by not more than an additional thirty (30) days the period within which he may so affirmatively approve or disapprove any such form, by giving notice of such extension before expiration of the initial thirty (30) day period. At the expiration of any such period as so extended, and in the absence of such prior affirmative approval or disapproval, any such form shall be deemed approved. The commissioner may at any time, after notice and for cause shown, withdraw any such approval.

Order of disapproval.

(3) Any order of the commissioner disapproving any such form or withdrawing a previous approval shall state the grounds therefor, and the particulars thereof in such details as reasonably to inform the insurer thereof.

(4) The commissioner may, by order, exempt from the requirements of this section for so long as he deems proper any insurance document or form or type thereof as specified in such order, to which, in his opinion, this section may not practicably be applied, or the filing and approval of which are, in his opinion, not desirable or necessary for the protection of the public.

Commissioner may exempt from filing.

(5) This section shall apply also to any such form used by domestic insurers for delivery in a jurisdiction outside this state, if the insurance supervisory official of such jurisdiction informs the commissioner that such form is not subject to approval or disapproval by such official, and upon the commissioner's order requiring the form to be submitted to him for the purpose. The applicable same standards shall apply to such forms as apply to forms for domestic use.

Reciprocity.

Section 272. **Grounds for disapproval.** The commissioner shall disapprove any form filed under section 271, or withdraw any previous approval thereof, only if the form:

Grounds for disapproval.

(1) Is in any respect in violation of or does not comply with this code.

(2) Contains or incorporates by reference, where such incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses, or exceptions and conditions which deceptively affect the risk purported to be assumed in the general coverage of the contract.

(3) Has any title, heading, or other indication of its provisions which is misleading.

(4) Is printed or otherwise reproduced in such manner as to render any provision of the form substantially illegible.

Section 273. **Standard provisions, in general.** (1) Insurance contracts shall contain such standard or uniform provisions as are required by the applicable provisions of this code pertaining to contracts of particular kinds of insurance. The commissioner may waive the required use of a particular provision in a particular insurance policy form if:

Standard provisions—insurance contracts.

Waiver of provisions.

(a) He finds such provision unnecessary for the protection of the insured and inconsistent with the purposes of the policy, and

(b) The policy is otherwise approved by him.

(2) No policy shall contain any provision inconsistent with or contradictory to any standard or uniform provision used or required to be used, but the commissioner may approve any substitute provision which is, in his opinion, not less favorable in any particular to the insured or beneficiary than the provisions otherwise required.

(3) In lieu of the provisions required by this code for contracts for particular kinds of insurance, substantially similar provisions required by the law of the domicile of a foreign or alien insurer may be used when approved by the commissioner.

(4) No such provision, if required to be contained in the policy, can be waived by agreement between the insurer and any other person.

Policy must contain entire contract.

Section 274. **Policy must contain entire contract.** The policy, when issued, shall contain the entire contract between the parties, and neither the insurer or any agent or representative thereof, nor any person insured thereunder, shall make any agreement as to the insurance which is not plainly expressed in the policy. This provision shall not be deemed to prohibit the modification of a policy, after issuance, by written rider or endorsement duly issued by the insurer.

General contents of policies.

Section 275. **Contents of policies in general; identification.**

(1) Every policy shall specify:

Names.

(a) The names of the parties to the contract.

Subject.

(b) The subject of the insurance.

Risks.

(c) The risks insured against.

Time.

(d) The time when the insurance thereunder takes effect and the period during which the insurance is to continue.

(e) The premium.

Premium.

(f) The conditions pertaining to the insurance.

Conditions.

(2) If under the policy the exact amount of premium is determinable only at stated intervals or termination of the contract, a statement of the basis and rates upon which the premium is to be determined and paid shall be included.

Rate basis.

(3) Subsections (1) and (2) of this section shall not apply as to surety contracts, or to group insurance policies.

Exceptions.

(4) All policies and annuity contracts issued by domestic insurers, and the forms thereof filed with the commissioner, shall have printed thereon an appropriate designating letter or figure, or combination of letters or figures or terms identifying the respective forms of policies or contracts, together with the year of adoption of such form. Whenever any change is made in any such form, the designating letters, figures or terms and year of adoption thereon shall be correspondingly changed.

Required printing of forms of policies.

Section 276. **Additional policy contents.** A policy may contain additional provisions not inconsistent with this code and which are:

Additional policy contents allowed.

(1) Required to be inserted by the laws of the insurer's domicile;

(2) Necessary, on account of the manner in which the insurer is constituted or operated, in order to state the rights and obligations of the parties to the contract; or

(3) Desired by the insurer and neither prohibited by law nor in conflict with any provisions required to be included therein.

Section 277. **Charter, bylaw provisions.** No policy shall contain any provision purporting to make any portion of the charter, bylaws or other constituent document of the insurer (other than the subscribers' agreement or power of attorney of a reciprocal insurer) a part of the contract unless such portion is set forth in full in the policy. Any policy provision in violation of this section shall be invalid.

Charter, by law provisions.

Execution
of policies.

Section 278. **Execution of policies.** (1) Every insurance policy shall be executed in the name of and on behalf of the insurer by its officer, attorney-in-fact, employee, or representative duly authorized by the insurer.

Facsimile
signature.

(2) A facsimile signature of any such executing individual may be used in lieu of an original signature.

Validity of
existing contracts.

(3) No insurance contract heretofore or hereafter issued and which is otherwise valid shall be rendered invalid by reason of the apparent execution thereof on behalf of the insurer by the imprinted facsimile signature of an individual not authorized so to execute as of the date of the policy.

Underwriters'
policies.

Section 279. **Underwriters' and combination policies.** (1) Two or more authorized insurers may jointly issue, and shall be jointly and severally liable on, an underwriters' policy bearing their names. Any one insurer may issue policies in the name of an underwriter's department and such policy shall plainly show the true name of the insurer.

Combination
policies.

(2) Two or more insurers may, with the approval of the commissioner, issue a combination policy which shall contain provisions substantially as follows:

Insurers
severally liable.

(a) That the insurers executing the policy shall be severally liable for the full amount of any loss or damage, according to the terms of the policy, or for specified percentages or amounts thereof, aggregating the full amount of insurance under the policy, and

Service of process.

(b) That service of process, or of any notice or proof of loss required by such policy, upon any of the insurers executing the policy, shall constitute service upon all such insurers.

Exception.

(3) This section shall not apply to co-surety obligations.

Interest in
reinsurance.

Section 280. **Interest in reinsurance.** The original insured has no interest in a contract of reinsurance.

Validity of
noncomplying
forms.

Section 281. **Validity of noncomplying forms.** Any insurance policy, rider, or endorsement hereafter issued and otherwise valid which contains any condition or provision not in compliance with the requirements of this

code, shall not be thereby rendered invalid but shall be construed and applied in accordance with such conditions and provisions as would have applied had such policy, rider, or endorsement been in full compliance with this code.

Construction
of policies.

Section 282. **Construction of policies.** Every insurance contract shall be construed according to the entirety of its terms and conditions as set forth in the policy and as amplified, extended, or modified by any rider, endorsement, or application which is a part of the policy.

Binder—terms.

Section 283. **Binders.** (1) Binders or other contracts for temporary insurance may be made orally or in writing, and shall be deemed to include all the usual terms of the policy as to which the binder was given together with such applicable endorsements as are designated in the binder, except as superseded by the clear and express terms of the binder.

Validity.

(2) No binder shall be valid beyond the issuance of the policy with respect to which it was given, or beyond ninety days from its effective date, whichever period is the shorter.

Extension.

(3) If the policy has not been issued a binder may be extended or renewed beyond such ninety days with the written approval of the insurer.

Exception.

(4) This section shall not apply to life or disability insurances.

Delivery
of policy.

Section 284. **Delivery of policy.** (1) Subject to the insurer's requirements as to payment of premium, every policy shall be mailed or delivered to the insured or to the person entitled thereto within a reasonable period of time after its issuance, except where a condition required by the insurer has not been met by the insured.

Duplicate policy.

(2) In event the original policy is delivered or is so required to be delivered to or for deposit with any vendor, mortgagee, or pledgee of any motor vehicle or aircraft, and in which policy any interest of the vendee, mortgagor, or pledgor in or with reference to such vehicle or aircraft is insured, a duplicate of such policy setting forth the name and address of the insurer, insurance classification of vehicle or aircraft, type of cover-

age, limits of liability, premiums for the respective coverages, and duration of the policy or memorandum thereof containing the same such information, shall be delivered by the vendor, mortgagee, or pledgee to each such vendee, mortgagor, or pledgor named in the policy or coming within the group of persons designated in the policy to be so included. If the policy does not provide coverage of legal liability for injury to persons or damage to the property of third parties, a statement of such fact shall be printed, written, or stamped conspicuously on the face of such duplicate policy or memorandum.

Policy may be renewed by certificate.

Section 285. **Renewal by certificate.** Any insurance policy terminating by its terms at a specified expiration date and not otherwise renewable, may be renewed or extended at the option of the insurer and upon a currently authorized policy form and at the premium rate then required therefor, for a specific additional period or periods by certificate or by endorsement of the policy, and without requiring the issuance of a new policy.

Assignment of policies.

Section 286. **Assignment of policies.** A policy may be assignable or not assignable, as provided by its terms. Subject to its terms relating to the assignability, any life or disability policy, whether heretofore or hereafter issued, under the terms of which the beneficiary may be changed upon the sole request of the insured may be assigned either by pledge or transfer of title, by an assignment executed by the insured alone and delivered to the insurer, whether or not the pledgee or assignee is the insurer. Any such assignment shall entitle the insurer to deal with the assignee as the owner or pledgee of the policy in accordance with the terms of the assignment, until the insurer has received at its home office written notice of termination of the assignment or pledge, or written notice by or on behalf of some other person claiming some interest in the policy in conflict with the assignment.

Payment of policy discharges insurer.

Section 287. **Payment discharges insurer.** Whenever the proceeds of or payments under a life or disability insurance policy or annuity contract heretofore or hereafter issued become payable in accordance with the terms of such policy or contract, or the exercise of any right or privilege thereunder, and the insurer makes payment

thereof in accordance with the terms of the policy or contract or in accordance with any written assignment hereof, the person then designated in the policy or contract or by such assignment as being entitled thereto shall be entitled to receive such proceeds or payments and to give full acquittance therefor, and such payments shall fully discharge the insurer from all claims under the policy or contract unless, before payment is made, the insurer has received at its home office written notice by or on behalf of some other person that such other person claims to be entitled to such payment or some interest in the policy or contract.

Minor may give acquittance.

Section 288. **Minor may give acquittance.** (1) Any minor domiciled in this state who has attained the age of sixteen years shall be deemed competent to receive and to give full acquittance and discharge for a payment or payments in aggregate amount not exceeding three thousand dollars (\$3,000) in any one year made by a life insurer under the maturity, death or settlement agreement provisions in effect or elected by such minor under a life insurance policy or annuity contract, provided such policy, contract or agreement shall provide for the payment or payments to such minor, and if prior to such payment the insurer has not received written notice of the appointment of a duly qualified guardian of the property of the minor. No such minor shall be deemed competent to alienate the right to or to anticipate such payments. This section shall not be deemed to restrict the rights of minors set forth in section 267 of this chapter.

(2) This section shall not be deemed to require any insurer to determine whether any other insurer may be effecting a similar payment to the same minor.

Forms for proof of loss.

Section 289. **Forms for proof of loss to be furnished.** An insurer shall furnish, upon written request of any person claiming to have a loss under an insurance contract issued by such insurer, forms of proof of loss for completion by such person, but such insurer shall not, by reason of the requirement so to furnish forms, have any responsibility for or with reference to the completion of such proof or the manner of any such completion or attempted completion.

Claims
administration
not waiver of
rights of insurer.

Section 290. **Claims administration not waiver.** Without limitation of any right or defense of an insurer otherwise, none of the following acts by or on behalf of an insurer shall be deemed to constitute a waiver of any provision of a policy or of any defense of the insurer thereunder:

(1) Acknowledgment of the receipt of notice of loss or claim under the policy.

(2) Furnishing forms for reporting a loss or claim, for giving information relative thereto, or for making proof of loss, or receiving or acknowledging receipt of any such forms or proofs completed or uncompleted.

(3) Investigating any loss or claim under any policy or engaging in negotiations looking toward a possible settlement of any such loss or claim.

Exemption of
life insurance
proceeds
as to creditors.

Section 291. **Exemption of life insurance proceeds as to creditors.** (1) If a policy of insurance, whether heretofore or hereafter issued, is effected by any person on his own life or on another life, in favor of a person other than himself, or except in cases of transfer with intent to defraud creditors, if a policy of life insurance is assigned or in any way made payable to any such person, the lawful beneficiary or assignee thereof, other than the insured or the person so effecting such insurance or executors or administrators of such insured or the person so effecting such insurance, shall be entitled to its proceeds and avails against the creditors and representatives of the insured and of the person effecting the same, whether or not the right to change the beneficiary is reserved or permitted, and whether or not the policy is made payable to the person whose life is insured if the beneficiary or assignee shall predecease such person; except that, subject to the statute of limitations, the amount of any premiums for such insurance paid with intent to defraud creditors with interest thereon, shall enure to their benefit from the proceeds of the policy; but the insurer issuing the policy shall be discharged of all liability thereof by payment of its proceeds in accordance with its terms, unless before such payment the insurer shall have received written notice at its home office, by or in behalf of a creditor, of a claim to recover for transfer

Exception—
premiums paid
with intent to
defraud creditors.

made or premiums paid with intent to defraud creditors, with specifications of the amount so claimed.

(2) For the purposes of subsection (1) above, a policy shall also be deemed to be payable to a person other than the insured if and to the extent that a facility-of-payment clause or similar clause in the policy permits the insurer to discharge its obligation after the death of the individual insured by paying the death benefits to a person as permitted by such clause.

Payment to
other than insured.

Section 292. **Exemption of proceeds, group life.** (1) A policy of group life insurance or the proceeds thereof payable to the individual insured or to the beneficiary thereunder, shall not be liable, either before or after payment, to be applied by any legal or equitable process to pay any debt or liability of such insured individual or his beneficiary or of any other person having a right under the policy. The proceeds thereof, when not made payable to a named beneficiary or to a third person pursuant to a facility-of-payment clause, shall not constitute a part of the estate of the individual insured for the payment of his debts.

Exemption
of proceeds—
group life.

(2) This section shall not apply to group life insurance issued pursuant to chapter 14 of this code to a creditor covering his debtors, to the extent that such proceeds are applied to payment of the obligation for the purpose of which the insurance was so issued.

Exception.

Section 293. **Exemption of proceeds, disability insurance.** The proceeds or avails of all contracts of disability insurance and of provisions providing benefits on account of the insured's disability which are supplemental to life insurance or annuity contracts heretofore or hereafter effected shall be exempt from all liability for any debt of the insured, and from any debt of the beneficiary existing at the time the proceeds are made available for his use.

Exemption
of proceeds—
disability
insurance.

Section 294. **Exemption of proceeds, annuity contracts; assignability of rights.** (1) The benefits, rights, privileges and options which under any annuity contract heretofore or hereafter issued are due or prospectively due the annuitant, shall not be subject to execution nor shall the annuitant be compelled to exercise any such

Exemption
of proceeds—
annuity
contracts.

rights, powers, or options, nor shall creditors be allowed to interfere with or terminate the contract, except:

Exception—
amounts paid
in defraud
of creditors.

(a) As to amounts paid for or as premium on any such annuity with intent to defraud creditors, with interest thereon, and of which the creditor has given the insurer written notice at its home office prior to the making of the payments to the annuitant out of which the creditor seeks to recover. Any such notice shall specify the amount claimed or such facts as will enable the insurer to ascertain such amount, and shall set forth such facts as will enable the insurer to ascertain the annuity contract, the annuitant and the payments sought to be avoided on the ground of fraud.

Amount
of exemption.

(b) The total exemption of benefits presently due and payable to any annuitant periodically or at stated times under all annuity contracts under which he is an annuitant, shall not at any time exceed two hundred and fifty dollars (\$250) per month for the length of time represented by such installments, and that such periodic payments in excess of three hundred and fifty dollars (\$350) per month shall be subject to garnishee execution.

Amount subject
to execution.

(c) If the total benefits presently due and payable to any annuitant under all annuity contracts under which he is an annuitant, shall at any time exceed payment at the rate of three hundred and fifty dollars (\$350) per month, then the court may order such annuitant to pay to a judgment creditor or apply on the judgment, in installments, such portion of such excess benefits as to the court may appear just and proper, after due regard for the reasonable requirements of the judgment debtor and his family, if dependent upon him, as well as any payments required to be made by the annuitant to other creditors under prior court orders.

Assignability.

(2) If the contract so provides, the benefits, rights, privileges or options accruing under such contract to a beneficiary or assignee shall not be transferable nor subject to commutation, and if the benefits are payable periodically or at stated times, the same exemptions contained herein for the annuitant, shall apply with respect to such beneficiary or assignee.

Annuity contract
defined.

(3) An annuity contract within the meaning of this

section shall be any obligation to pay certain sums at stated times, during life or lives, or for a specified term or terms, issued for a valuable consideration, regardless of whether or not such sums are payable to one or more persons, jointly or otherwise, but does not include payments under life insurance contracts at stated times during life or lives, or for a specified term or terms.

CHAPTER 13—LIFE INSURANCE AND ANNUITIES

Section 295. **Scope of chapter.** This chapter applies only to contracts of life insurance and annuities, other than reinsurance, group life insurance and group annuities.

Scope.

Section 296. **“Industrial life insurance” defined.** For the purposes of this code “industrial life insurance” is that form of life insurance written under policies of face amount of one thousand dollars (\$1,000) or less bearing the words “industrial policy” imprinted on the face thereof as part of the descriptive matter, and under which premiums are payable monthly or more often.

“Industrial life
insurance”
defined.

Section 297. **Standard provisions required.** (1) No policy of life insurance other than group, and pure endowments with or without return of premiums or of premiums and interest, shall be delivered or issued for delivery in this state unless it contains in substance all of the applicable provisions as required by sections 298 to 310, inclusive, of this chapter. This section shall not apply to annuity contracts nor to any provision of a life insurance policy, or contract supplemental thereto, relating to disability benefits or to additional benefits in the event of death by accident or accidental means.

Standard
provisions
required—
life insurance.

(2) Any of such provisions or portions thereof not applicable to single premium or term policies shall to that extent not be incorporated therein.

Section 298. **Grace period.** There shall be a provision that a grace period of thirty (30) days, or, at the option of the insurer, of one month of not less than thirty (30) days, or of four (4) weeks in the case of industrial life insurance policies the premiums for which are payable more frequently than monthly, shall be allowed within which the payment of any premium after the first may be made, during which period of grace the policy shall

Grace period.

continue in full force; but if a claim arises under the policy during such period of grace the amount of any premium due or overdue may be deducted from the policy proceeds.

Incontestability
clause.

Section 299. **Incontestability.** There shall be a provision that the policy (exclusive of provisions relating to disability benefits or to additional benefits in the event of death by accident or accidental means) shall be incontestable, except for nonpayment of premiums, after it has been in force during the lifetime of the insured for a period of two (2) years from its date of issue.

Policy constitutes
entire contract.

Section 300. **Entire contract.** There shall be a provision that the policy, or the policy and the application therefor if a copy of such application is endorsed upon or attached to the policy when issued, shall constitute the entire contract between the parties, and if the application is so made a part of the policy, that all statements contained in the application shall, in the absence of fraud, be deemed representations and not warranties.

Payment
in event of
misstatement
of age.

Section 301. **Misstatement of age.** There shall be a provision that if the age of the insured or of any other person whose age is considered in determining the premium has been misstated, any amount payable or benefit accruing under the policy shall be such as the premium would have purchased at the correct age or ages.

Dividends—
participating
policies.

Section 302. **Dividends.** (1) There shall be a provision in participating policies that, beginning not later than the end of the third policy year, the insurer shall annually ascertain and apportion the divisible surplus, if any, that will accrue on the policy anniversary or other dividend date specified in the policy provided the policy is in force and all premiums to that date are paid. Except as hereinafter provided, any dividend becoming payable shall at the option of the party entitled to elect such option be either:

Options.

(a) Payable in cash, or

(b) Applied to any one of such other dividend options as may be provided by the policy. If any such other dividend options are provided, the policy shall further state which option shall be automatically effective if such party shall not have elected some other op-

tion. If the policy specifies a period within which such other dividend option may be elected, such period shall be not less than thirty (30) days following the date on which such dividend is due and payable. The annually apportioned dividend shall be deemed to be payable in cash within the meaning of (a) above even though the policy provides that payment of such dividend is to be deferred for a specified period, provided such period does not exceed six (6) years from the date of apportionment and that interest will be added to such dividend at a specified rate. If a participating policy provides that the benefit under any paid-up nonforfeiture provision is to be participating, it may provide that any divisible surplus becoming payable or apportioned while the insurance is in force under such nonforfeiture provision shall be applied in the manner set forth in the policy.

(2) In participating industrial life insurance policies, in lieu of the provision required in subsection (1) above, there shall be a provision that, beginning not later than the end of the fifth policy year, the policy shall participate annually in the divisible surplus, if any, in the manner set forth in the policy.

Participating
industrial life
insurance
policies.

Section 303. **Policy loan.** There shall be a provision that after three (3) full years' premiums have been paid and after the policy has a cash surrender value and while no premium is in default beyond the grace period for payment, the insurer will advance, on proper assignment or pledge of the policy and on the sole security thereof, at a specified rate of interest not exceeding six percent (6%) per annum, an amount equal to or, at the option of the party entitled thereto, less than the loan value of the policy. The loan value of the policy shall be at least equal to the cash surrender value at the end of the then current policy year, provided that the insurer may deduct, either from such loan value or from the proceeds of the loan, any existing indebtedness not already deducted in determining such cash surrender value including any interest then accrued but not due, any unpaid balance of the premium for the current policy year, and interest on the loan to the end of the current policy year. The policy may also provide that if interest on any indebtedness is not paid when due it shall then be added to the existing indebtedness and

Policy loan
provision.

Loan value
equals cash
surrender
value.

Nonpayment
of interest.

shall bear interest at the same rate, and that if and when the total indebtedness on the policy, including interest due or accrued, equals or exceeds the amount of the loan value thereof, then the policy shall terminate and become void. The policy shall reserve to the insurer the right to defer the granting of a loan, other than for the payment of any premium to the insurer, for six (6) months after application therefor. The policy, at the insurer's option, may provide for automatic premium loan, subject to an election of the party entitled to elect.

Option.

Exception—
term policies.

This section shall not apply to term policies nor to term insurance benefits provided by rider or supplemental policy provisions, or to industrial life insurance policies.

Table of values.

Section 304. **Table of values.** There shall be a table showing in figures the loan value, if required under section 303, and the cash surrender values and nonforfeiture benefits in accordance with section 325 (2) (e), either during the first twenty (20) policy years or during the term of the policy, whichever is shorter.

Table of
installments.

Section 305. **Table of installments.** In case the policy provides that the proceeds may be payable in installments which are determinable at issue of the policy, there shall be a table showing the amounts of the guaranteed installments.

Reinstatement
provision.

Section 306. **Reinstatement.** There shall be a provision that unless:

- (1) The policy has been surrendered for its cash surrender value, or
- (2) Its cash surrender value has been exhausted, or
- (3) The paid-up term insurance, if any, has expired, the policy will be reinstated at any time within three (3) years (or two (2) years in the case of industrial life insurance policies) from the date of premium default upon written application therefor, the production of evidence of insurability satisfactory to the insurer, the payment of all premiums in arrears and the payment or reinstatement of any other indebtedness to the insurer

upon the policy, all with interest at a rate not exceeding six percent (6%) per annum compounded annually.

Section 307. **Payment of premiums.** There shall be a provision relative to the payment of premiums.

Payment
of premiums.

Section 308. **Payment of claims.** There shall be a provision that when a policy shall become a claim by the death of the insured, settlement shall be made upon receipt of due proof of death and, at the insurer's option, surrender of the policy and/or proof of the interest of the claimant. If an insurer shall specify a particular period prior to the expiration of which settlement shall be made, such period shall not exceed two (2) months from the receipt of such proofs.

Payment
of claims.

Section 309. **Beneficiary, industrial policies.** An industrial life insurance policy shall have the name of the beneficiary designated thereon with a reservation of the right to designate or change the beneficiary after the issuance of the policy. The policy may also provide that no designation or change of beneficiary shall be binding on the insurer until endorsed on the policy by the insurer, and that the insurer may refuse to endorse the name of any proposed beneficiary who does not appear to the insurer to have an insurable interest in the life of the insured. The policy may also provide that if the beneficiary designated in the policy does not make a claim under the policy or does not surrender the policy with due proof of death within the period stated in the policy, which shall not be less than thirty (30) days after the death of the insured, or if the beneficiary is the estate of the insured, or is a minor, or dies before the insured, or is not legally competent to give a valid release, then the insurer may make any payment thereunder to the executor or administrator of the insured, or to any relative of the insured by blood or legal adoption or connection by marriage, or to any person appearing to the insurer to be equitably entitled thereto by reason of having been named beneficiary, or by reason of having incurred expense for the maintenance, medical attention or burial of the insured. The policy may also include a similar provision applicable to any other payment due under the policy.

Designation
and change of
beneficiary—
industrial
policies.Payment
of policy.

Title of policy.

Section 310. **Title.** There shall be a title on the policy, briefly describing the same.

Effect of incontestability clause.

Section 311. **Excluded or restricted coverage.** A clause in any policy of life insurance providing that such policy shall be incontestable after a specified period shall preclude only a contest of the validity of the policy, and shall not preclude the assertion at any time of defenses based upon provisions in the policy which exclude or restrict coverage, whether or not such restrictions or exclusions are excepted in such clause.

Standard provisions—annuity and pure endowment contracts.

Section 312. **Standard provisions — Annuity and pure endowment contracts.** (1) No annuity or pure endowment contract, other than reversionary annuities, survivorship annuities or group annuities and except as stated herein, shall be delivered or issued for delivery in this state unless it contains in substance each of the provisions specified in sections 313 to 318, inclusive, of this chapter. Any of such provisions not applicable to single premium annuities or single premium pure endowment contracts shall not, to that extent, be incorporated therein.

Exception—deferred annuities.

(2) This section shall not apply to contracts for deferred annuities included in or upon the lives of beneficiaries under, life insurance policies.

Grace period—annuities.

Section 313. **Grace period — Annuities.** In an annuity or pure endowment contract, other than a reversionary, survivorship or group annuity, there shall be a provision that there shall be a period of grace of one month, but not less than thirty (30) days, within which any stipulated payment to the insurer falling due after the first may be made, subject at the option of the insurer to an interest charge thereon at a rate to be specified in the contract but not exceeding six percent (6%) per annum for the number of days of grace elapsing before such payment, during which period of grace the contract shall continue in full force; but in case a claim arises under the contract on account of death prior to expiration of the period of grace before the overdue payment to the insurer or the deferred payments of the current contract year, if any, are made, the amount of such payments, with interest on any overdue payments, may

be deducted from any amount payable under the contract in settlement.

Section 314. **Incontestability — Annuities.** If any statements, other than those relating to age, sex and identity are required as a condition to issuing an annuity or pure endowment contract, other than a reversionary, survivorship, or group annuity, and subject to section 316 of this chapter, there shall be a provision that the contract shall be incontestable after it has been in force during the lifetime of the person or of each of the persons as to whom such statements are required, for a period of two (2) years from its date of issue, except for non-payment of stipulated payments to the insurer; and at the option of the insurer such contract may also except any provisions relative to benefits in the event of disability and any provisions which grant insurance specifically against death by accident or accidental means.

Incontestability—
annuities.

Section 315. **Entire contract — Annuities.** In an annuity or pure endowment contract, other than a reversionary, survivorship, or group annuity, there shall be a provision that the contract shall constitute the entire contract between the parties or, if a copy of the application is endorsed upon or attached to the contract when issued, a provision that the contract and the application therefor shall constitute the entire contract between the parties.

Entire contract—
annuities.

Section 316. **Misstatement of age or sex — Annuities.** In an annuity or pure endowment contract, other than a reversionary, survivorship, or group annuity, there shall be a provision that if the age or sex of the person or persons upon whose life or lives the contract is made, or of any of them, has been misstated, the amount payable or benefits accruing under the contract shall be such as the stipulated payment or payments to the insurer would have purchased according to the correct age or sex and that if the insurer shall make or has made any overpayment or overpayments on account of any such misstatement, the amount thereof, with interest at the rate to be specified in the contract but not exceeding six percent (6%) per annum, may be charged against the current or next succeeding payment or payments to be made by the insurer under the contract.

Payment
in event of
misstatement
of age.

Dividends—
annuities.

Section 317. **Dividends—Annuities.** If an annuity or pure endowment contract, other than a reversionary, survivorship, or group annuity, is participating, there shall be a provision that the insurer shall annually ascertain and apportion any divisible surplus accruing on the contract.

Reinstatement—
annuities.

Section 318. **Reinstatement—Annuities.** In an annuity or pure endowment contract, other than a reversionary, survivorship, or group annuity, there shall be a provision that the contract may be reinstated at any time within one year from the default in making stipulated payments to the insurer, unless the cash surrender value had been paid, but all overdue stipulated payments and any indebtedness to the insurer on the contract shall be paid or reinstated with interest thereon at a rate to be specified in the contract but not exceeding six percent (6%) per annum payable annually, and in cases where applicable the insurer may also include a requirement of evidence of insurability satisfactory to the insurer.

Standard
provisions—
reversionary
annuities.

Section 319. **Standard provisions—Reversionary annuities.** (1) Except as stated herein, no contract for a reversionary annuity shall be delivered or issued for delivery in this state unless it contains in substance each of the following provisions:

Option of insurer.

(a) Any such reversionary annuity contract shall contain the provisions specified in sections 313 through 317 except that under section 313 the insurer may at its option provide for an equitable reduction of the amount of the annuity payments in settlement of an overdue payment in lieu of providing for deduction of such payments from an amount payable upon settlement under the contract.

Reinstatement
on payment.

(b) In such reversionary annuity contracts there shall be a provision that the contract may be reinstated at any time within three (3) years from the date of default in making stipulated payments to the insurer, upon production of evidence of insurability satisfactory to the insurer, and upon condition that all overdue payments and any indebtedness to the insurer on account of the contract be paid, or, within the limits permitted by the then cash values of the contract, reinstated, with in-

terest as to both payments and indebtedness at a rate to be specified in the contract but not exceeding six percent (6%) per annum compounded annually.

(2) This section shall not apply to group annuities or to annuities included in life insurance policies, and any of such provisions not applicable to single premium annuities shall not to that extent be incorporated therein.

Exceptions.

Section 320. **Limitation of liability.** (1) No policy of life insurance shall be delivered or issued for delivery in this state if it contains any of the following provisions:

Limitations
of liability—
prohibited
provisions.

(a) A provision for a period shorter than that provided by statute within which an action at law or in equity may be commenced on such a policy.

Contravening
statute of
limitations.

(b) A provision which excludes or restricts liability for death caused in a certain specified manner or occurring while the insured has a specified status, except that a policy may contain provisions excluding or restricting coverage as specified therein in the event of death under any one or more of the following circumstances:

Manner of death.

Exceptions.

(i) Death as a result, directly or indirectly, of war, declared or undeclared, or of action by military forces, or of any act or hazard of such war or action, or of service in the military, naval, or air forces or in civilian forces auxiliary thereto, or from any cause while a member of such military, naval, or air forces of any country at war, declared or undeclared, or of any country engaged in such military action;

(ii) Death as a result of aviation or any air travel or flight;

(iii) Death as a result of a specified hazardous occupation or occupations;

(iv) Death while the insured is a resident outside continental United States and Canada; or

(v) Death within two (2) years from the date of issue of the policy as a result of suicide, while sane or insane.

(2) A policy which contains any exclusion or restric-

Payment.

tion pursuant to subsection (1) of this section shall also provide that in the event of death under the circumstances to which any such exclusion or restriction is applicable, the insurer will pay an amount not less than a reserve determined according to the commissioners reserve valuation method upon the basis of the mortality table and interest rate specified in the policy for the calculation of nonforfeiture benefits (or if the policy provides for no such benefits, computed according to a mortality table and interest rate determined by the insurer and specified in the policy) with adjustment for indebtedness or dividend credit.

Exceptions.

(3) This section shall not apply to industrial life insurance, group life insurance, disability insurance, reinsurance, or annuities, or to any provision in a life insurance policy relating to disability benefits or to additional benefits in the event of death by accident or accidental means.

Favorable provisions.

(4) Nothing contained in this section shall prohibit any provision which in the opinion of the commissioner is more favorable to the policyholder than a provision permitted by this section.

**Prohibited provisions—
industrial life insurance.**

Section 321. **Prohibited provisions, industrial life insurance.** No policy of industrial life insurance shall contain any of the following provisions:

Other insurance.

(1) A provision by which the insurer may deny liability under the policy for the reason that the insured has previously obtained other insurance from the same insurer.

Failure to disclose disease or treatment.

(2) A provision giving the insurer the right to declare the policy void because the insured has had any disease or ailment, whether specified or not, or because the insured has received institutional, hospital, medical or surgical treatment or attention, except a provision which gives the insurer the right to declare the policy void if the insured has, within two years prior to the issuance of the policy, received institutional, hospital, medical or surgical treatment or attention and if the insured or claimant under the policy fails to show that the condition occasioning such treatment or attention was not of a serious nature or was not material to the risk.

Prior rejection.

(3) A provision giving the insurer the right to declare the policy void because the insured has been rejected for insurance, unless such right be conditioned upon a showing by the insurer that knowledge of such rejection would have led to a refusal by the insurer to make such contract.

Effect of reinstatement, incontestability.

Section 322. **Incontestability, limitation of liability after reinstatement.** (1) A reinstated policy of life insurance or annuity contract may be contested on account of fraud or misrepresentation of facts material to the reinstatement only for the same period following reinstatement and with the same conditions and exceptions as the policy provides with respect to contestability after original issuance.

Limitation of liability.

(2) When any life insurance policy or annuity contract is reinstated, such reinstated policy or contract may exclude or restrict liability to the same extent that such liability might have been or was excluded or restricted when the policy or contract was originally issued, and such exclusion or restriction shall be effective from the date of reinstatement.

**Policy settlements—
right to hold proceeds.**

Section 323. **Policy settlements.** Any life insurer shall have the power to hold under agreement the proceeds of any policy issued by it, upon such terms and restrictions as to revocation by the policyholder and control by beneficiaries, and with such exemptions from the claims of creditors of beneficiaries other than the policyholder as set forth in the policy or as agreed to in writing by the insurer and the policyholder. Upon maturity of a policy, in the event the policyholder has made no such agreement, the insurer shall have the power to hold the proceeds of the policy under an agreement with the beneficiaries. The insurer shall not be required to segregate the funds so held but may hold them as part of its general assets.

Indebtedness deducted from proceeds.

Section 324. **Indebtedness deducted from proceeds.** In determining the amount due under any life insurance policy heretofore or hereafter issued, deduction may be made of:

Unpaid premiums.

(1) Any unpaid premiums or installments thereof for the current policy year due under the terms of the policy, and of

Principal
and interest.

(2) The amount of principal and accrued interest of any policy loan or other indebtedness against the policy then remaining unpaid.

Standard
nonforfeiture
life insurance.

Section 325. **Standard nonforfeiture law—Life insurance.** (1) This section shall be known as the standard nonforfeiture law.

Provisions.

(2) Nonforfeiture provisions—Life: In the case of policies issued on or after the operative date of this section as defined in subsection (11) of this section, no policy of life insurance, except as set forth in subsection (10) of this section, shall be delivered or issued for delivery in this state unless it shall contain in substance the following provisions, or corresponding provisions which in the opinion of the commissioner are at least as favorable to the defaulting or surrendering policyholder:

Paid up benefit.

(a) That in the event of default in any premium payment, after premiums have been paid for at least one full year, the insurer will grant, upon proper request not later than sixty (60) days after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated in the policy, effective as of such due date of such value as may be hereinafter specified.

Cash surrender
within 60 days
of default.

(b) That upon surrender of the policy within sixty (60) days after the due date of any premium payment in default after premiums have been paid for at least three (3) full years in the case of ordinary insurance, and five (5) full years in the case of industrial insurance, the insurer will pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender value of such amount as may be hereinafter specified.

Option.

(c) That a specified paid-up nonforfeiture benefit shall become effective as specified in the policy unless the person entitled to make such election elects another available option not later than sixty (60) days after the due date of the premium in default.

Cash surrender
of paid-up
policies.

(d) That if the policy shall have become paid up by completion of all premium payments, or if it is continued under any paid-up nonforfeiture benefit which became effective on or after the third policy anniversary in the case of ordinary insurance, or the fifth policy anniversary in the case of industrial insurance, the insurer will

pay, upon surrender of the policy within thirty (30) days after any policy anniversary, a cash surrender value of such amount as may be hereinafter specified.

(e) A statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefit, if any, available under the policy on each policy anniversary, either during the first twenty (20) policy years or during the term of the policy, whichever is shorter, such values and benefits to be calculated upon the assumption that there are no dividends or paid-up additions credited to the policy and that there is no indebtedness to the insurer on the policy.

Statement
of tables.

(f) A statement that the cash surrender values and the paid-up nonforfeiture benefits available under the policy are not less than the minimum values and benefits required by or pursuant to the insurance law of this state; an explanation of the manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the insurer on the policy; if a detailed statement of the method of computation of the values and benefits shown in the policy is not stated therein, a statement that such method of computation has been filed with the insurance supervisory official of the state in which the policy is delivered; and a statement of the method to be used in calculating the cash surrender value and paid-up nonforfeiture benefit available under the policy on any policy anniversary beyond the last anniversary for which such values and benefits are consecutively shown in the policy.

Statement of
minimum values.

Alteration.

Statement of
computation.Statement of
method.

(3) Any of the provisions or portions thereof set forth in subdivisions (a) through (f) of the foregoing subsection (2) which are not applicable by reason of the plan of insurance may, to the extent inapplicable, be omitted from the policy. The insurer shall reserve the right to defer the payment of any cash surrender value for a period of six (6) months after demand therefor with surrender of the policy.

Right to defer.

Computation
of cash
surrender value
in event of
default—life.

(4) Cash surrender value—Life: Any cash surrender value available under the policy in the event of default in the premium payment due on any policy anniversary, whether or not required by subsection (2) of this section, shall be an amount not less than the excess, if any, of the present value on such anniversary of the future guaranteed benefits which would have been provided for by the policy, including any existing paid-up additions if there had been no default, over the sum of:

(a) The then present value of the adjusted premiums as defined in subsection (6) of this section, corresponding to premiums which would have fallen due on and after such anniversary, and

(b) The amount of any indebtedness to the insurer on account of or secured by the policy. Any cash surrender value available within thirty (30) days after any policy anniversary under any policy paid up by completion of all premium payments, or any policy continued under any paid-up nonforfeiture benefits, whether or not required by such subsection (2), shall be an amount not less than the present value, on such anniversary, of the future guaranteed benefits provided for by the policy, including any existing paid-up additions, decreased by any indebtedness to the insurer on account of or secured by the policy.

(5) Paid-up nonforfeiture benefit—Life: Any paid-up nonforfeiture benefit available under the policy in the event of default in the premium payment due on any policy anniversary shall be such that its present value as of such anniversary shall be at least equal to the cash surrender value then provided for by the policy, or, if none is provided for, that cash surrender value which would have been required by this section in the absence of the conditions that premiums shall have been paid for at least a specified period.

Computation
of adjusted
premium—life.

(6) The adjusted premium — Life: The adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding extra premiums on a substandard policy, that the present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to the sum of:

(a) The then present value of the future guaranteed benefits provided for by the policy;

(b) Two percent (2%) of the amount of the insurance if the insurance be uniform in amount, or of the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with the duration of the policy;

(c) Forty percent (40%) of the adjusted premium for the first policy year;

(d) Twenty-five percent (25%) of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less, provided, however, that in applying the percentages specified in subdivisions (c) and (d) above, no adjusted premiums shall be deemed to exceed four percent of the amount of insurance or uniform amount equivalent thereto. Whenever the plan or term of a policy has been changed, either by request of the insured or automatically in accordance with the provisions of the policy, the date of inception of the changed policy for the purposes of determining a nonforfeiture benefit or cash surrender value shall be the date as of which the age of the insured is determined for the purposes of the changed policy. The date of issue of a policy for the purposes of this subsection shall be the date as of which the rated age of the insured is determined.

(7) In the case of a policy providing an amount of insurance varying with the duration of the policy, the equivalent uniform amount thereof for the purpose of the preceding subsection (6) shall be deemed to be the uniform amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy, provided, however, that in the case of a policy for a varying amount of insurance issued on the life of a child under age ten (10), the equivalent uni-

Computation
in case of
insurance
varying with
duration of policy.

form amount may be computed as though the amount of insurance provided by the policy prior to the attainment of age ten were the amount provided by such policy at age ten (10).

Basis for calculation of adjusted premiums and present values.

(8) All adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of the commissioners 1941 standard ordinary mortality table, provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated, at the option of the insurer with approval of the commissioner, according to an age younger than the actual age of the insured. Such calculations for all policies of industrial insurance shall be made on the basis of the 1941 standard industrial mortality table. All calculations shall be made on the basis of the rate of interest, not exceeding three-and-one-half percent ($3\frac{1}{2}\%$) per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits, provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than one hundred thirty percent (130%) of the rates of mortality according to such applicable table, provided further that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the insurer and approved by the commissioner.

Calculation of values—Life.

(9) Calculation of values—Life: Any cash surrender value and any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment due at any time other than on the policy anniversary shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary. All values referred to in subsections (4), (5), (6), (7) and (8) of this section may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death. The net value of any paid-up additions, other than paid-up term additions, shall be not less than the dividends used to provide such additions. Notwithstanding the

provisions of subsection (4) of this section, additional benefits payable:

Additional benefits payable.

- (a) In the event of death or dismemberment by accident or accidental means,
- (b) In the event of total and permanent disability,
- (c) As reversionary annuity or deferred reversionary annuity benefits,
- (d) As term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this section would not apply, and
- (e) As other policy benefits additional to life insurance and endowment benefits, and premiums for all such additional benefits,

Shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this section, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits.

(10) Exceptions. This section shall not apply to any reinsurance, group insurance, pure endowment, annuity or reversionary annuity contract, nor to any term policy of uniform amount, or renewal thereof, of fifteen (15) years or less expiring before age 66 for which uniform premiums are payable during the entire term of the policy, nor to any term policy of decreasing amount on which each adjusted premium, calculated as specified in subsections (6), (7) and (8) of this section is less than the adjusted premium so calculated on a policy issued at the same age and for the same initial amount of insurance for a term defined as follows: For ages at issue fifty (50) and under, the term shall be fifteen (15) years; thereafter, the term shall decrease one (1) year for each year of age beyond fifty (50).

Exceptions.

(11) Operative date. After the effective date of the act by which this section was originally enacted, any insurer could have filed with the state auditor a written notice of its election to comply with the provisions of this section after a specified date before January 1, 1948, with respect to the policies specified in the notice. After the filing of such notice, then upon such specified date (which shall be the operative date for such insurer

Operative date.

with respect to such policies), this section shall have become operative with respect to the policies specified in such notice thereafter issued by such insurer. As to all of its policies and contracts with respect to which an insurer makes no such election, the operative date of this section with respect to such policies and contracts for such insurer is January 1, 1948.

Nonforfeiture rights—policies issued prior to operative date.

Section 326. **Nonforfeiture rights, old policies.** (1) This section shall apply only to policies of life insurance issued prior to the operative date of section 325 (standard nonforfeiture law).

(2) In event of default in payment of any premium due on any policy, provided not less than three (3) full years' premiums shall have been paid, there shall be secured to the insured, without action on his part, either paid-up or extended insurance as specified in the policy, the net value of which shall be at least equal to the entire net reserve held by the insurer of such policy, less two and one-half percent ($2\frac{1}{2}\%$) of the amount insured by the policy and dividend additions, if any, and less any outstanding indebtedness to the insurer on the policy at time of default. There shall be secured to the insured the right to surrender the policy to the insurer at its home office within one (1) month after date of default for cash value otherwise available for the purchase of the paid-up or extended insurance as aforesaid.

Prohibited policy plans.

Section 327. **Prohibited policy plans.** (1) No insurer shall issue for delivery or deliver in this state any life insurance policy or annuity contract issued under any plan for the segregation of policyholders into mathematical groups and providing benefits for a surviving policyholder of a group arising out of the death of another policyholder of such group, or under any other similar plan.

(2) No insurer shall issue for delivery or deliver in this state any life insurance policy or annuity contract providing benefits or values for surviving or continuing policyholders contingent upon the lapse or termination of the policies of other policyholders, whether by death or otherwise. This provision shall not be deemed to prohibit the payment or allowance of regular annual dividends or "savings" under participating forms of poli-

cies or contracts, nor prohibit the annual distribution to policyholders or beneficiaries of sums representing in part gains to the insurer from lapses, surrenders or mortality either in general or as resulting from particular classifications of policies.

CHAPTER 14 — GROUP LIFE INSURANCE

Section 328. **Group contracts must meet group requirements.**

Group contracts must meet requirements.

(1) No life insurance policy shall be delivered in this state insuring the lives of more than one individual unless to one of the groups as provided for in sections 329 through 333 of this chapter, and unless in compliance with the other applicable provisions of this chapter.

(2) Subsection (1) above, shall not apply to life insurance policies:

(a) Insuring only individuals related by blood, marriage or legal adoption; or

(b) Insuring only individuals having a common interest through ownership of a business enterprise, or a substantial legal interest or equity therein, and who are actively engaged in the management thereof; or

(c) Insuring only individuals otherwise having an insurable interest in each other's lives.

Section 329. **Employee groups.** The lives of a group of individuals may be insured under a policy issued to an employer, or to the trustees of a fund established by an employer, which employer or trustees shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer, subject to the following requirements:

Employee groups—policyholder.

(1) The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "employees" shall include the employees of one or more subsidiary corporations, and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietors or partnerships if the business of the employer and of such af-

Eligibility of employees.

filiated corporations, proprietors or partnerships is under common control. The policy may provide that the term "employees" shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include retired employees. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation, by performing services other than the usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless he is actively engaged in and devotes a substantial part of his time to the conduct of the business of the proprietor or partnership.

Payment of
group premiums.

(2) The premium for the policy shall be paid by the policyholder, either wholly from the employer's funds or funds contributed by him, or partly from such funds and partly from funds contributed by the insured employees. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured employees. A policy on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least seventy-five percent (75%) of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contribution. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

Ten employees.

(3) The policy must cover at least ten (10) employees at date of issue.

Policy based
on plan.

(4) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustees.

Labor union
groups—
policyholder.

Section 330. **Labor union groups.** The lives of a group of individuals may be insured under a policy issued to a labor union, which shall be deemed the policyholder, to insure members of such union for the benefit of persons other than the union or any of its officials,

representatives or agents, subject to the following requirements:

(1) The members eligible for insurance under the policy shall be all of the members of the union, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the union, or both.

Members of union.

(2) The premium for the policy shall be paid by the policyholder, either wholly from the union's funds, or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance. A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force only if at least seventy-five percent (75%) of the then eligible members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

Limitations.
Payment
of premium.

(3) The policy must cover at least twenty-five (25) members at date of issue.

25 members.

(4) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members or by the union.

Policy based
on plan.

Section 331. **Trustee groups.** The lives of a group of individuals may be insured under a policy issued to the trustees of a fund established by two (2) or more employers or by one (1) or more labor unions, or by one or more employers and one or more labor unions, which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions for the benefit of persons other than the employers or the unions, subject to the following requirements:

Trustee groups—
policyholders.

(1) The persons eligible for insurance shall be all of

Eligibility.

the employees of the employers or all of the members of the unions, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the unions, or to both. The policy may provide that the term "employees" shall include retired employees, and the individual proprietor or partners if an employer is an individual proprietor or a partnership. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless he is actively engaged in and devotes a substantial part of his time to the conduct of the business of the proprietor or partnership. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship.

Limitations—
payment
of premium.

(2) The premium for the policy shall be paid by the trustees wholly from funds contributed by the employer or employers of the insured persons, or by the union or unions, or by both, or partly from such funds and partly from funds contributed by the insured persons. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured persons specifically for their insurance. A policy on which part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance may be placed in force only if at least seventy-five percent (75%) of the then eligible persons, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance must insure all eligible persons or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

Number of
persons required.

(3) The policy must cover at date of issue at least one hundred (100) persons and not less than an average of five (5) persons per employer unit; and if the fund

is established by the members of an association of employers the policy may be issued if:

(a) Either

(i) The participating employers constitute at date of issue at least sixty percent (60%) of those employer members whose employees are not already covered for group life insurance, or

(ii) The total number of persons covered at date of issue exceeds six hundred (600); and

(b) The policy shall not require that, if a participating employer discontinues membership in the association, the insurance of his employees shall cease solely by reason of such discontinuance.

Policy
requirement.

(4) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder, employers, or unions.

Policy based
on plan.

Section 332. **Public employee groups.** The lives of a group of individuals may be insured under a policy issued to an incorporated city, town, or village, or an association or league of cities, towns or villages, an independent school district, state college or university, any association of state employees, and any association of state, county and city, town or village employees, and any combination of state, county, or city, town or village employees, and any department of the state or county government, which employer or association shall be deemed the policyholder, to insure the employees of any such incorporated city, town or village, of any such independent school district, of any such state college and university, or of any such department of the state or county government, or members of any association of state, county, or city, town or village employees, for the benefit of persons other than the policyholder subject to the following requirements:

Public employee
groups—
policyholders.

(1) The employees eligible for insurance under the policy shall be all of the employees of the employer or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may

Eligibility.

provide that the term "employees" shall include retired employees.

Limitations—
payment
of premiums.

(2) The premium for the policy shall be paid by the policyholder, wholly from funds contributed by it as employer or partly from such funds and partly from funds contributed by the insured employees or wholly from funds contributed by the insured employees, except that:

Salary deductions.

(a) The employer may deduct from the employees' salaries the required contributions for the premiums when authorized in writing by the respective employees so to do; and

Funds
for payment.

(b) The premium for the policy may be paid by the policyholder wholly or partly from funds contributed by any incorporated city, town or village policyholder when authorized by the charter of such city, town or village or as otherwise authorized by law.

Election—
eligible employees.

(3) Such policy may be placed in force only if at least seventy-five percent (75%) of the eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required premium contributions and become insured thereunder.

Ten employees.

(4) The policy must cover at least ten (10) employees at date of issue.

"Employees"
defined.

(5) A policy issued to insure the employees of a public body may provide that the term "employees" shall include elected or appointed officials.

Debtor groups—
policyholder.

Section 333. **Debtor groups.** The lives of a group of individuals may be insured under a policy issued to a creditor, who shall be deemed the policyholder, to insure the debtors of the creditor, subject to the following requirements:

Eligibility.

(1) The debtors eligible for insurance under the policy shall be all of the debtors of the creditor whose indebtedness is repayable either (a) in installments, or (b) in one sum at the end of a period not in excess of eighteen months from the initial date of the debt, or all of any class or classes thereof determined by conditions pertaining to the indebtedness or the purchase giving

rise to the indebtedness. The policy may provide that the term "debtors" shall include the debtors of one or more subsidiary corporations, and the debtors of one or more affiliated corporations, proprietors or partnerships if the business of the policyholder and of such affiliated corporations, proprietors or partnerships is under common control.

Limitations—
payment
of premiums.

(2) The premium for the policy shall be paid by the policyholder, either from the creditor's funds, or from charges collected from the insured debtors, or from both. A policy on which part or all of the premium is to be derived from the collection from the insured debtors of identifiable charges not required of uninsured debtors shall not include, in the class or classes of debtors eligible for insurance, debtors under obligations outstanding at its date of issue without evidence of individual insurability unless at least seventy-five percent of the then eligible debtors elect to pay the required charges. A policy on which no part of the premium is to be derived from the collection of such identifiable charges must insure all eligible debtors, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

Number of
persons required.

(3) The policy may be issued only if the group of eligible debtors is then receiving new entrants at the rate of at least one hundred (100) persons yearly, or may reasonably be expected to receive at least one hundred new entrants during the first policy year, and only if the policy reserves to the insurer the right to require evidence of individual insurability if less than seventy-five percent (75%) of the new entrants become insured. The policy may exclude from the classes eligible for insurance classes of debtors determined by age.

Limitation—
amount
of insurance.

(4) The amount of insurance in the life of any debtor shall at no time exceed the amount owed by him to the creditor, or ten thousand dollars (\$10,000), whichever is less. Where the indebtedness is repayable in one sum to the creditor, the insurance on the life of any debtor shall in no instance be in effect for a period in excess of eighteen months, except that such insurance may be continued for an additional period not exceeding six

months in the case of default, extension or recasting of the loan.

Insurance
payable to
policyholder.

(5) The insurance shall be payable to the policyholder. Each payment shall reduce or extinguish the unpaid indebtedness of the debtor to the extent of such payment.

Credit union
groups—
policyholder.

Section 334. **Credit union group.** The lives of a group of individuals may be insured under a policy issued to a credit union organized pursuant to the laws of the State of Montana or the federal credit union act, which shall be deemed the policyholder, to insure eligible members for amounts of insurance not in excess of the share balance of each member, based upon some plan which will preclude individual selection, for the benefit of someone other than the credit union or its officials and subject to the following requirements:

Eligibility.

(1) The members eligible for insurance under the policy shall be all the members of the credit union who meet standard physical requirement conditions of the insurer, or all of any class or classes thereof determined by conditions pertaining to their age, or to membership in the credit union or both.

Limitations—
payment
of premiums.

(2) The premiums for the policy shall be paid by the policyholder, either wholly from the credit union's funds, or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance. A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed only if at least seventy-five percent (75%) of the then eligible members, excluding any as to whom evidence of individual insurability is not satisfactory to the insured, elect to make the required contribution. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy must cover at least twenty-five (25) members at the date of issue. 25 members.

Section 335. **Limit as to amount.** No such policy of group life insurance may be issued to an employer, or to a labor union, or to the trustees of a fund established in whole or in part by an employer or a labor union, which provides term insurance on any person which together with any other term insurance under any group life insurance policy or policies issued to the employers of such person or to a labor union or labor unions of which such person is a member or to the trustees of a fund or funds established in whole or in part by such employer or employers or such labor union or labor unions, exceeds twenty thousand dollars (\$20,000), unless one hundred and fifty percent (150%) of the annual compensation of such person from his employer or employers exceeds twenty thousand dollars (\$20,000), in which event all such term insurance shall not exceed forty thousand dollars (\$40,000) or one hundred and fifty percent (150%) of such annual compensation, whichever is the lesser.

Limitation—
amounts
of insurance.

Section 336. **Dependents' coverage.** Any group life policy issued under section 329 (employee groups), or 330 (labor union groups) or 331 (trustee groups) may be extended to insure the employees or members against loss due to the death of their spouses and minor children, or any class or classes thereof, subject to the following requirements:

Dependents'
coverage
may be provided.

(1) The premium for the insurance shall be paid by the policyholder, either from the employer's or union's funds or funds contributed by the employer or union, or from funds contributed by the insured employees or members, or from both. If any part of the premium is to be derived from funds contributed by the insured employees or members, the insurance with respect to spouses and children may be placed in force only if at least seventy-five percent (75%) of the then eligible employees or members, excluding any as to whose family members evidence of insurability is not satisfactory to the insurer, elect to make the required contribution. If no part of the premium is to be derived from funds contributed by the employees or members, all eligible em-

Limitations—
payment
of premiums.

ployees or members, excluding any as to whose family members evidence of insurability is not satisfactory to the insurer, must be insured with respect to their spouses and children.

Amounts
of insurance
based on plan.

(2) The amounts of insurance must be based upon some plan precluding individual selection either by the employees or members or by the policyholder, employer or union, and shall not exceed, with respect to any spouse or child, the amount shown in the following schedule:

Age of Family Member at Death	Maximum Amount of Insurance
Under 6 months.....	\$ 100
6 months and under 2 years.....	200
2 years and under 3 years.....	400
3 years and under 4 years.....	600
4 years and under 5 years.....	800
5 years and over.....	1,000

Rights on
termination—
payment
of premium.

(3) Upon termination of the insurance with respect to the members of the family of any employee or member by reason of the employee's or member's termination of employment, termination of membership in the class or classes eligible for coverage under the policy, or death, the spouse shall be entitled to have issued by the insurer, without evidence of insurability, an individual policy of life insurance, without disability or other supplementary benefits, providing application for the individual policy shall be made, and the first premium paid to the insurer, within thirty-one days after such termination, subject to the requirements of subdivisions (1), (2) and (3) of section 344 of this chapter. If the group policy terminates or is amended so as to terminate the insurance of any class of employees or members and the employee or member is entitled to have issued an individual policy under section 346 of this chapter, the spouse shall also be entitled to have issued by the insurer an individual policy, subject to the conditions and limitations provided above. If the spouse dies within the period during which he would have been entitled to have an individual policy issued in accordance with this provision, the amount of life insurance which he would have been entitled to have issued under such individual policy shall be payable as

a claim under the group policy, whether or not application for the individual policy or the payment of the first premium therefor has been made.

(4) Notwithstanding section 344 of this chapter, only one certificate need be issued for delivery to an insured person if a statement concerning any dependent's coverage is included in such certificate.

One certificate.

Section 337. **Provisions required in group contracts.** No policy of group life insurance shall be delivered in this state unless it contains in substance the provisions set forth in sections 338 through 347 of this chapter or provisions which in the opinion of the commissioner are more favorable to the persons insured, or at least as favorable to the persons insured and more favorable to the policyholder; except, however, that:

Provisions
required in
group contracts.

(1) Sections 343 to 347 inclusive shall not apply to policies issued to a creditor to insure debtors of such creditor;

(2) The standard provisions required for individual life insurance policies shall not apply to group life insurance policies; and

(3) If the group life insurance policy is on a plan of insurance other than the term plan, it shall contain a nonforfeiture provision or provisions which in the opinion of the commissioner is or are equitable to the insured persons and to the policyholder, but nothing herein shall be construed to require that group life insurance policies contain the same nonforfeiture provisions as are required for individual life insurance policies.

Nonforfeiture
provision.

Section 338. **Grace period.** The group life insurance policy shall contain a provision that the policyholder is entitled to a grace period of thirty-one (31) days for the payment of any premium due except the first, during which grace period the death benefit coverage shall continue in force, unless the policyholder shall have given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy. The policy may provide that the policyholder shall be liable to the insurer for the payment of a pro rata premium for the time the policy was in force during such grace period.

Grace period—
group life.

Incontestability
clause.

Section 339. **Incontestability.** The group life insurance policy shall contain a provision that the validity of the policy shall not be contested, except for nonpayment of premium, after it has been in force for two (2) years from its date of issue; and that no statement made by any person insured under the policy relating to his insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after such insurance has been in force prior to the contest for a period of two (2) years during such person's lifetime nor unless it is contained in a written instrument signed by him.

Applications—
statements
deemed
representations.

Section 340. **Application; statements deemed representations.** The group life insurance policy shall contain a provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued, that all statements made by the policyholder or by the persons insured shall be deemed representations and not warranties, and that no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such person or to his beneficiary.

Insurability—
evidence.

Section 341. **Insurability.** The group life insurance policy shall contain a provision setting forth the conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of his coverage.

Adjustment—
misstatement
of age.

Section 342. **Misstatement of age.** The group life insurance policy shall contain a provision specifying an equitable adjustment of premiums or of benefits or of both to be made in the event the age of a person insured has been misstated, such provision to contain a clear statement of the method of adjustment to be used.

Payment
of benefits
provision.

Section 343. **Payment of benefits.** The group life insurance policy shall contain a provision that any sum becoming due by reason of the death of the person insured shall be payable to the beneficiary designated by the person insured, subject to the provisions of the policy in the event there is no designated beneficiary as to all or any part of such sum living at the death of the person

insured, and subject to any right reserved by the insurer in the policy and set forth in the certificate to pay at its option a part of such sum not exceeding five hundred dollars (\$500) to any person appearing to the insurer to be equitably entitled thereto by reason of having incurred funeral or other expenses incident to the last illness or death of the person insured.

Section 344. **Certificate.** The group life insurance policy shall contain a provision that the insurer will issue to the policyholder for delivery to each person insured an individual certificate setting forth a statement as to the insurance protection to which he is entitled, to whom the insurance benefits are payable, and the rights and conditions set forth in sections 345, 346 and 347.

Individual
certificate.

Section 345. **Conversion on termination of eligibility.** The group life insurance policy shall contain a provision that if the insurance, or any portion of it, on a person covered under the policy ceases because of termination of employment or of membership in the class or classes eligible for coverage under the policy, such person shall be entitled to have issued to him by the insurer, without evidence of insurability, an individual policy of life insurance without disability or other supplementary benefits, provided application for the individual policy shall be made, and the first premium paid to the insurer, within thirty-one (31) days after such termination, and provided further that:

Conversion
on termination
of eligibility.

(1) The individual policy shall, at the option of such person, be on any one of the forms, except term insurance, then customarily issued by the insurer at the age and for the amount applied for;

Form of
individual
policy.

(2) The individual policy shall be in an amount not in excess of the amount of life insurance which ceases because of such termination, less the amount of any life insurance for which such person is or becomes eligible under any other group policy within thirty-one (31) days after such termination, provided that any amount of insurance which shall have matured on or before the date of such termination as an endowment payable to the person insured, whether in one sum or in installments or in the form of an annuity, shall not, for the purposes of this

Amount of
individual
policy.

provision, be included in the amount which is considered to cease because of such termination; and

Rate of premium.

(3) The premium on the individual policy shall be at the insurer's then customary rate applicable to the form and amount of the individual policy, to the class of risk to which such person then belongs, and to his age attained on the effective date of the individual policy.

Conversion on termination of group policy.

Section 346. **Conversion on termination of policy.** The group life insurance policy shall contain a provision that if the group policy terminates or is amended so as to terminate the insurance of any class of insured persons, every person insured thereunder at the date of such termination whose insurance terminates and who has been so insured for at least five (5) years prior to such termination date shall be entitled to have issued to him by the insurer an individual policy of life insurance, subject to the same conditions and limitations as are provided by section 345, except that the group policy may provide that the amount of such individual policy shall not exceed the smaller of:

Amount of individual policy.

(1) The amount of the person's life insurance protection ceasing because of the termination or amendment of the group policy, less the amount of any life insurance for which he is or becomes eligible under any group policy issued or reinstated by the same or another insurer within thirty-one (31) days after such termination, and

(2) Two thousand dollars (\$2,000).

Payment in event of death pending conversion.

Section 347. **Death pending conversion.** The group life insurance policy shall contain a provision that if a person insured under the policy dies during the period within which he would have been entitled to have an individual policy issued to him in accordance with section 345 or 346 and before such an individual policy shall have become effective, the amount of life insurance which he would have been entitled to have issued to him under such individual policy shall be payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium therefor has been made.

Section 348. **Notice as to conversion right.** If any individual insured under a group life insurance policy hereafter delivered in this state becomes entitled under the terms of such policy to have an individual policy of life insurance issued to him without evidence of insurability, subject to making of application and payment of the first premium within the period specified in such policy, and if such individual is not given notice of the existence of such right at least fifteen (15) days prior to the expiration date of such period, then, in such event the individual shall have an additional period within which to exercise such right, but nothing herein contained shall be construed to continue any insurance beyond the period provided in such policy. This additional period shall expire fifteen (15) days next after the individual is given such notice, but in no event shall such additional period extend beyond sixty (60) days next after the expiration date of the period provided in such policy. Written notice presented to the individual or mailed by the policyholder to the last known address of the individual or mailed by the insurer to the last known address of the individual as furnished by the policyholder shall constitute notice for the purpose of this section.

Right to notice of conversion rights.

Section 349. **"Employee life insurance" defined.** "Employee life insurance" is that plan of life insurance, other than salary savings life insurance or pension trust insurance and annuities, under which individual policies are issued to the employees of any employer and where such policies are issued on the lives of not less than five (5) employees at date of issue. Premiums for such policies shall be paid by the employer or the trustee of a fund established by the employer either wholly from the employer's funds, or funds contributed by him, or partly from such funds and partly from funds contributed by the insured employees.

"Employee life insurance" defined.

Section 350. **Violations.** Violations of this chapter are subject to the penalties provided by section 17 (general penalty).

Penalties.

CHAPTER 15 — DISABILITY INSURANCE POLICIES

Section 351. **Scope of chapter.** Nothing in this chapter shall apply to or affect:

Scope of chapter—disability insurance policies.

(1) Any policy of liability or workmen's compensation insurance with or without supplementary expense coverage therein.

(2) Any group or blanket policy.

(3) Life insurance, endowment or annuity contracts, or contracts supplemental thereto which contain only such provisions relating to disability insurance as:

(a) Provide additional benefits in case of death or dismemberment or loss of sight by accident or accidental means, or as

(b) Operate to safeguard such contracts against lapse, or to give a special surrender value or special benefit or an annuity in the event that the insured or annuitant becomes totally and permanently disabled, as defined by the contract or supplemental contract.

(4) Reinsurance.

Required format
of policy.

Section 352. **Scope, format of policy.** No policy of disability insurance shall be delivered or issued for delivery to any person in this state unless it otherwise complies with this code, and complies with the following:

Consideration.

(1) The entire money and other considerations therefor shall be expressed therein;

Time.

(2) The time when the insurance takes effect and terminates shall be expressed therein;

Insured.

(3) It shall purport to insure only one person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family, who shall be deemed the policyholder, any two (2) or more eligible members of that family, including husband, wife, dependent children or any children under a specified age which shall not exceed nineteen years and any other person dependent upon the policyholder;

Appearance
of policy.

(4) The style, arrangement and overall appearance of the policy shall give no undue prominence to any portion of the text, and every printed portion of the text of the policy and of any endorsements or attached papers shall be plainly printed in light-faced type of a style in general use, the size of which shall be uniform

and not less than ten (10) point with a lower case unspaced alphabet length not less than one hundred and twenty (120) point (the "text" shall include all printed matter except the name and address of the insurer, name or title of the policy, the brief description, if any, and captions and subcaptions);

(5) The exceptions and reductions of indemnity shall be set forth in the policy and, other than those contained in sections 354 to 376, inclusive, of this chapter, shall be printed, at the insurer's option, either included with the benefit provision to which they apply, or under an appropriate caption such as "exceptions," or "exceptions and reductions," except that if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of such exception or reduction shall be included with the benefit provision to which it applies;

Indemnity.

(6) Each such form, including riders and endorsements, shall be identified by a form number in the lower left-hand corner of the first page thereof;

Identification.

(7) The policy shall contain no provision purporting to make any portion of the charter, rules, constitution or bylaws of the insurer a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the commissioner.

Limitation.

Section 353. **Required provisions; captions — Omissions — Substitutions.** (1) Except as provided in subsection (2) below, each such policy delivered or issued for delivery to any person in this state shall contain the provisions specified in sections 354 to 365, inclusive, of this chapter, in the words in which the same appear; except, that the insurer may, at its option, substitute for one or more of such provisions corresponding provisions of different wording approved by the commissioner which are in each instance not less favorable in any respect to the insured or the beneficiary. Each such provision shall be preceded individually by the applicable caption shown, or, at the option of the insurer, by such appropriate individual or group captions or sub-captions as the commissioner may approve.

Required provisions.

Inapplicable provisions.

(2) If any such provision is in whole or in part inapplicable to or inconsistent with the coverage provided by a particular form of policy, the insurer, with the approval of the commissioner, shall omit from such policy any inapplicable provision or part of a provision and shall modify any inconsistent provision or part of a provision in such manner as to make the provision as contained in the policy consistent with the coverage provided by the policy.

Provision for changes.

Section 354. **Entire contract — Changes.** There shall be a provision as follows:

"Entire contract; changes: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless such approval be endorsed hereon or attached hereto. No agent has authority to change this policy or to waive any of its provisions."

Provision—
Time limit on
certain defenses.

Section 355. **Time limit on certain defenses.** There shall be a provision as follows:

"Time limit on certain defenses: (1) After three years from the date of issue of this policy no misstatements, except fraudulent misstatements, made by the applicant in the application for such policy shall be used to void the policy or to deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of such three-year period."

(The foregoing policy provision shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during such initial three-year period, nor to limit the application of sections 367 through 371 of this chapter in the event of misstatement with respect to age or occupation or other insurance).

Incontestability clause.

(A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium (a) until at least age fifty (50) or, (b) in the case of a policy issued after age forty-four (44), for at least five (5) years from its date of issue, may contain in lieu of the foregoing the following provision (from which the clause in parentheses may be omitted at the insurer's option) under the caption "incontestable":

"After this policy has been in force for a period of three years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application").

(2) No claim for loss incurred or disability (as defined in the policy) commencing after three years from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy."

Insurability.

Section 356. **Grace period.** There shall be a provision as follows:

Grace period.

"Grace period: A grace period of . . . (insert a number not less than '7' for weekly premium policies, '10' for monthly premium policies and '31' for all other policies) days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force."

A policy in which the insurer reserves the right to refuse renewal shall have, at the beginning of the above provision,

Notice of
intention
not to renew.

"Unless not less than thirty days prior to the premium due date the insurer has delivered to the insured or has mailed to his last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted."

Section 357. **Reinstatement.** There shall be a provision as follows:

Reinstatement.

"Reinstatement: If any renewal premium be not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept such premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy; provided, however, that if the insurer or such agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy

will be reinstated upon approval of such application by the insurer or, lacking such approval, upon the forty-fifth (45th) day following the date of such conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of such application. The reinstated policy shall cover only loss resulting from such accidental injury as may be sustained after the date of reinstatement and loss due to such sickness as may begin more than ten days after such date. In all other respects the insured and insurer shall have the same rights thereunder as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted in connection with a reinstatement shall be applied to a period for which premium has not been previously paid, but not to any period more than sixty (60) days prior to the date of reinstatement."

The last sentence of the above provision may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums:

(1) Until at least age fifty (50), or

(2) In the case of a policy issued after age forty-four (44), for at least five (5) years from its date of issue.

Written notice
of claim.

Section 358. **Notice of claim.** There shall be a provision as follows:

"Notice of claim: Written notice of claim must be given to the insurer within twenty (20) days after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at . . . (insert the location of such office as the insurer may designate for the purpose), or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer."

Loss-of-time
benefit.

In a policy providing a loss-of-time benefit which may be payable for at least two (2) years, an insurer may at its option insert the following between the first and second sentences of the above provision:

"Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least two years, he shall, at least once in every six (6) months after having given notice of the claim, give to the insurer notice of continuance of the disability, except in the event of legal incapacity. The period of six (6) months following any filing of proof by the insured or any payment by the insurer on account of such claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in the giving of such notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of six (6) months preceding the date on which such notice is actually given."

Notice of
continuance
of disability.

Section 359. **Claim forms.** There shall be a provision as follows:

Duty of insurer
to furnish
claim forms.

"Claim forms: The insurer, upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not furnished within fifteen days after the giving of such notice the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character and the extent of the loss for which claim is made."

Section 360. **Proofs of loss.** There shall be a provision as follows:

Written proofs
of loss.

"Proofs of loss: Written proof of loss must be furnished to the insurer at its said office in case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss within ninety (90) days after the termination of the period for which the insurer is liable and in case of claim for any other loss within ninety (90) days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity,

later than one (1) year from the time proof is otherwise required."

Provision—
time of payment
of claims.

Section 361. **Time of payment of claims.** There shall be a provision as follows:

"Time of payment of claims: Indemnities payable under this policy for any loss other than loss for which this policy provides any periodic payment, will be paid immediately upon receipt of due written proof of such loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid . . . (insert period for payment which must not be less frequently than monthly) and any balance remaining unpaid upon the termination of liability will be paid immediately upon receipt of due written proof."

Payment of
claims—
to whom.

Section 362. **Payment of claims.** There shall be a provision as follows:

"Payment of claims: Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at the time of payment. If no such designation or provision is then effective, such indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to such beneficiary or to such estate. All other indemnities will be payable to the insured."

The following provisions, or either of them, may be included with the foregoing provision at the option of the insurer:

"If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay such indemnity, up to an amount not exceeding \$..... (insert an amount which shall not exceed \$1,000), to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of such payment."

"Subject to any written direction of the insured in the application or otherwise all or a portion of any indemnities provided by this policy on account of hospital, nursing, medical or surgical services may, at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proof of such loss, be paid directly to the hospital or person rendering such services; but it is not required that the service be rendered by a particular hospital or person."

Section 363. **Physical examination, autopsy.** There shall be a provision as follows:

Physical
examination,
autopsy.

"Physical examinations and autopsy: The insurer at its own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law."

Section 364. **Legal actions.** There shall be a provision as follows:

Time for
legal actions.

"Legal actions: No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after written proof of loss has been furnished in accordance with the requirements of this policy. No such action shall be brought after the expiration of three (3) years after the written proof of loss is required to be furnished."

Section 365. **Change of beneficiary.** There shall be a provision as follows: "Change of beneficiary: Unless the insured makes an irrevocable designation of beneficiary, the right to change a beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries, or to any other changes in this policy."

Change of
beneficiary.

(The first clause of this provision, relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option).

Section 366. **Optional policy provisions.** Except as provided in subsection (2) of section 353 of this chapter, no such policy delivered or issued for delivery to any

Optional policy
provisions.

person in this state shall contain provisions respecting the matters set forth in sections 367 to 376, inclusive, of this chapter unless such provisions are in the words in which the same appear in the applicable section, except that the insurer may, at its option, use in lieu of any such provision a corresponding provision of different wording approved by the commissioner which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appropriate caption or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the commissioner may approve.

Approval by
commissioner.

Provision—
adjusted amounts
in event of
change of
occupation.

Section 367. **Change of occupation.** There may be a provision as follows: "Change of occupation: If the insured be injured or contract sickness after having changed his occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for such more hazardous occupation. If the insured changes his occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly, and will return the excess pro rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such state prior to the occurrence of the loss or prior to the date of proof of change in occupation."

Section 368. **Misstatement of age.** There may be a provision as follows:

Adjustment—
misstatement
of age.

"Misstatement of age: If the age of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the correct age."

Section 369. **Other insurance in this insurer.** There may be a provision as follows:

Excess of other
insurance—
return premium.

"Other insurance in this insurer: If an accident or sickness or accident and sickness policy or policies previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for . . . (insert type of coverage or coverages) in excess of \$..... (insert maximum limit of indemnity or indemnities) the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured or to his estate."

Or, in lieu thereof:

"Insurance effective at any one time on the insured under a like policy or policies in this insurer is limited to the one such policy elected by the insured, his beneficiary or his estate, as the case may be, and the insurer will return all premiums paid for all other such policies."

Section 370. **Insurance with other insurers** (Provision of service or expense incurred basis). (1) There may be a provision as follows:

Insurance with
other insurers—
proportionment—
provision of
service or
expense incurred
basis.

"Insurance with other insurers: If there be other valid coverage, not with this insurer, providing benefits for the same loss on a provision of service basis or on an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability under any expense incurred coverage of this policy shall be for such proportion of the loss as the amount which would otherwise have been payable hereunder plus the total of the like amounts under all such other valid coverages for the same loss of which this insurer had notice bears to the total like amounts under all valid coverages for such loss, and for the return of such portion of the premiums paid as shall exceed the pro rata portion for the amount

so determined. For the purpose of applying this provision when other coverage is on a provision of service basis, the 'like amount' of such other coverage shall be taken as the amount which the services rendered would have cost in the absence of such coverage."

Expense incurred—
benefits—
optional
provision—
other valid
coverage.

(2) If the foregoing policy provision is included in a policy which also contains the policy provision set out in section 371 of this chapter there shall be added to the caption of the foregoing provision the phrase "—Expense incurred benefits." The insurer may, at its option, include in this provision a definition of "other valid coverage," approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and by hospital or medical service organizations, and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of such definition such term shall not include group insurance, automobile medical payments insurance, or coverage provided by hospital or medical service organizations or by union welfare plans or employer or employee benefit organizations. For the purpose of applying the foregoing policy provisions with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workmen's compensation or employer's liability statute) whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third party liability coverage shall be included as "other valid coverage."

Proportionment—
insurance with
other insurers.

Section 371. Insurance with other insurers — Other benefits.

(1) There may be a provision as follows:

"Insurance with other insurers: If there be other valid coverage, not with this insurer, providing benefits for the same loss on other than an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability for such benefits under this policy shall

be for such proportion of the indemnities otherwise provided hereunder for such loss as the like indemnities of which the insurer had notice (including the indemnities under this policy) bear to the total amount of all like indemnities for such loss, and for the return of such portion of the premium paid as shall exceed the pro rata portion for the indemnities thus determined."

(2) If the foregoing policy provision is included in a policy which also contains the policy provision set out in section 370 of this chapter, there shall be added to the caption of the foregoing provision the phrase "—Other benefits." The insurer may, at its option, include in this provision a definition of "other valid coverage," approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of such definition such term shall not include group insurance, or benefits provided by union welfare plans or by employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workmen's compensation or employer's liability statute) whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third party liability coverage shall be included as "other valid coverage."

Other benefits—
optional
provision—
other valid
coverage.

Section 372. Relation of earnings to insurance. (1)

There may be a provision as follows:

Liability based
on relation
of earnings
to insurance.

"Relation of earnings to insurance: If the total monthly amount of loss of time benefits promised for the same loss under all valid loss of time coverage upon the insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or his average monthly earnings for the period of two years immediately preceding a

disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings or such average monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such two years as shall exceed the pro rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of \$200 or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time."

Optional provision—valid loss of time coverage.

(2) The foregoing policy provision may be inserted only in a policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (a) until at least age 50, or (b) in the case of a policy issued after age 44, for at least five years from its date of issue. The insurer may, at its option, include in this provision a definition of "valid loss of time coverage," approved as to form by the commissioner, which definition shall be limited in subject-matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, or to any other coverage the inclusion of which may be approved by the commissioner or any combination of such coverages. In the absence of such definition such term shall not include any coverage provided for such insured pursuant to any compulsory benefit statute (including any workmen's compensation or employer's liability statute), or benefits provided by union welfare plans or by employer or employee benefit organizations.

Deduction—unpaid premiums.

Section 373. **Unpaid premiums.** There may be a provision as follows:

"Unpaid premiums: Upon the payment of a claim under this policy, any premium then due and unpaid or covered by any note or written order may be deducted therefrom."

Section 374. **Conformity with state statutes.** There may be a provision as follows:

Amendment to conform with state statutes.

"Conformity with state statutes: Any provision of this policy which, on its effective date is in conflict with the statutes of the state in which the insured resides on such date is hereby amended to conform to the minimum requirements of such statutes."

Section 375. **Illegal occupation.** There may be a provision as follows:

Insurer not liable—illegal occupation.

"Illegal occupation: The insurer shall not be liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation."

Section 376. **Intoxicants and narcotics.** There may be a provision as follows:

Insurer not liable—intoxicants and narcotics.

"Intoxicants and narcotics: The insurer shall not be liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician."

Section 377. **Renewal at option of insurer.** Disability insurance policies, other than accident insurance only policies, in which the insurer reserves the right to refuse renewal on an individual basis, shall provide in substance in a provision thereof or in an endorsement thereon or rider attached thereto that subject to the right to terminate the policy upon non-payment of premium when due, such right to refuse renewal may not be exercised so as to take effect before the renewal date occurring on, or after and nearest, each policy anniversary (or in the case of lapse and reinstatement, at the renewal date occurring on, or after and nearest, each anniversary of the last reinstatement), and that any refusal of renewal shall be without prejudice to any claim originating while the policy is in force. (The parenthetical reference to lapse and reinstatement may be omitted at the insurer's option).

Renewal—option of insurer.

Optional.

Section 378. **Order of certain provisions.** The provisions which are the subject of sections 357 to 380, in-

Logical order of certain provisions.

clusive, of this chapter, or any corresponding provisions which are used in lieu thereof in accordance with such sections, shall be printed in the consecutive order of the provisions in such sections or, at the option of the insurer, any such provision may appear as a unit in any part of the policy, with other provisions to which it may be logically related, provided that the resulting policy shall not be in whole or in part unintelligible, uncertain, ambiguous, abstruse, or likely to mislead a person to whom the policy is offered, delivered or issued.

Section 379. **Third party ownership.** The word "insured," as used in this chapter, shall not be construed as preventing a person other than the insured with a proper insurable interest from making application for and owning a policy covering the insured or from being entitled under such a policy to any indemnities, benefits, and rights provided therein.

Section 380. **Requirement of other jurisdictions.** (1) Any policy of a foreign or alien insurer, when delivered or issued for delivery to any person in this state, may contain any provision which is not less favorable to the insured or the beneficiary than the provisions of this chapter and which is prescribed or required by the law of the state or country under which the insurer is organized.

(2) Any policy of a domestic insurer may, when issued for delivery in any other state or country, contain any provision permitted or required by the laws of such other state or country.

Section 381. **Conforming to statute.** (1) No policy provision which is not subject to this chapter shall make a policy, or any portion thereof, less favorable in any respect to the insured or the beneficiary than the provisions thereof which are subject to this chapter.

(2) A policy delivered or issued for delivery to any person in this state in violation of this chapter shall be held valid but shall be construed as provided in this chapter. When any provision in a policy subject to this chapter is in conflict with any provision of this chapter, the rights, duties, and obligations of the insurer, the insured and the beneficiary shall be governed by the provisions of this chapter.

Section 382. **Age limit.** If any such policy contains a provision establishing, as an age limit or otherwise, a date after which the coverage provided by the policy will not be effective, and if such date falls within a period for which premium is accepted by the insurer or if the insurer accepts a premium after such date, the coverage provided by the policy will continue in force subject to any right of cancellation until the end of the period for which premium has been accepted. In the event the age of the insured has been misstated and if, according to the correct age of the insured, the coverage provided by the policy would not have become effective, or would have ceased prior to the acceptance of such premium or premiums, then the liability of the insurer shall be limited to the refund, upon request, of all premiums paid for the period not covered by the policy.

Section 383. **Franchise disability insurance law.** Disability insurance on a franchise plan is hereby declared to be that form of disability insurance issued to:

(1) Five or more employees of any corporation, co-partnership, or individual employer or any governmental corporation, agency or department thereof; or

(2) Ten or more members, employees or employees of members of any trade or professional association or of a labor union or of any other association having had an active existence for at least two (2) years where such association or union has a constitution or bylaws and is formed in good faith for purposes other than that of obtaining insurance;

Where such persons with or without their dependents, are issued the same form of an individual policy varying only as to amounts and kinds of coverage applied for by such persons under an arrangement whereby the premiums on such policies may be paid to the insurer periodically by the employer, with or without payroll deductions, or by the association for its members, or by some designated person acting on behalf of such employer, association or union. The term "employees" as used herein may be deemed to include the officers, managers and employees and retired employees of the employer and the individual proprietor or partners if the employer is an individual proprietor or partnership.

Age limit
construed.

Age limit—
misstatement.

Disability
insurance—
franchise
plan defined.

"Employees"
defined.

Third party
ownership
of policy.

Policy
provisions—
foreign or alien
insurer.

Provisions—
laws of other
jurisdictions.

Less favorable
provisions
prohibited.

Policies construed
with statute.

Penalties.

Section 384. **Violations.** Violations of this chapter are subject to the penalties provided by section 17 (general penalty).

CHAPTER 16—
GROUP AND BLANKET DISABILITY INSURANCE

Group disability insurance defined—eligibility.

Section 385. **Group disability insurance defined; eligible groups.** Group disability insurance is hereby declared to be that form of disability insurance covering groups of persons as defined below, with or without one or more members of their families or one or more of their dependents, or covering one or more members of the families or one or more dependents of such groups of persons, and issued upon the following basis:

Employers, trustees.

(1) Under a policy issued to an employer or trustees of a fund established by an employer, who shall be deemed the policyholder, insuring employees of such employer for the benefit of persons other than the employer. The term "employees" as used herein shall be deemed to include the officers, managers, and employees of the employer, the individual proprietor or partner if the employer is an individual proprietor or partnership, the officers, managers, and employees of subsidiary or affiliated corporations, the individual proprietors, partners and employees of individuals and firms, if the business of the employer and such individual or firm is under common control through stock ownership, contract, or otherwise. The term "employees" as used herein may include retired employees. A policy issued to insure employees of a public body may provide that the term "employees" shall include elected or appointed officials. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship.

Retired employees.

Associations, labor unions.

(2) Under a policy issued to an association, including a labor union, which shall have a constitution and by-laws and which has been organized and is maintained in good faith for purposes other than that of obtaining insurance, insuring members, employees, or employees of members of the association for the benefit of persons other than the association or its officers or trustees. The term "employees" as used herein may include retired employees.

Retired employees.

(3) Under a policy issued to the trustees of a fund established by two (2) or more employers in the same or related industry or by one or more labor unions or by one or more employers and one or more labor unions or by an association as defined in subdivision (2) above, which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions or of such association, or employees of members of such association, for the benefit of persons other than the employers or the unions or such association. The term "employees" as used herein may include the officers, managers and employees of the employer, and the individual proprietor or partners if the employer is an individual proprietor or partnership. The term "employees" as used herein may include retired employees. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship.

Trustees of fund—groups of employers or unions.

"Employees" defined.

Retired employees.

(4) Under a policy issued to any person or organization to which a policy of group life insurance may be issued or delivered in this state to insure any class or classes of individuals that could be insured under such group life policy.

Group life policyholders.

(5) Under a policy issued to cover any other substantially similar group which, in the discretion of the commissioner, may be subject to the issuance of a group disability policy or contract.

Other groups.

(6) Any group disability policy which contains provisions for the payment by the insurer of benefits for expenses incurred on account of hospital, nursing, medical, or surgical services for members of the family or dependents of a person in the insured group may provide for the continuation of such benefit provisions, or any part or parts thereof, after the death of the person in the insured group.

Group disability policies.

Section 386. **Required provisions.** Each such group disability insurance policy shall contain in substance the following provisions:

Required provisions—group disability policies.

(1) A provision that, in the absence of fraud, all statements made by applicants or the policyholder or by an insured person shall be deemed representations and

Statements deemed representations.

not warranties, and that no statement made for the purpose of effecting insurance shall avoid such insurance or reduce benefits unless contained in a written instrument signed by the policyholder or the insured person, a copy of which has been furnished to such policyholder or to such person or his beneficiary.

Statements
to individuals.

(2) A provision that the insurer will furnish to the policyholder for delivery to each employee or member of the insured group, a statement in summary form of the essential features of the insurance coverage of such employee or member and to whom benefits thereunder are payable. If dependents are included in the coverage, only one certificate need be issued for each family unit.

New employees.

(3) A provision that to the group originally insured may be added from time to time eligible new employees or members or dependents, as the case may be, in accordance with the terms of the policy.

Group disability
policy—
direct payment
of services.

Section 387. Direct payment of hospital, medical services. Any group disability policy may on request by the group policyholder provide that all or any portion of any indemnities provided by any such policy on account of hospital, nursing, medical or surgical services may, at the insurer's option, be paid directly to the hospital or person rendering such services; but the policy may not require that the service be rendered by a particular hospital or person. Payment so made shall discharge the insurer's obligation with respect to the amount of insurance so paid.

Blanket disability
insurance defined.

Section 388. Blanket disability insurance defined. Blanket disability insurance is hereby declared to be that form of disability insurance covering groups of persons as enumerated in one of the following subdivisions:

Passengers.

(1) Under a policy or contract issued to any common carrier or to any operator, owner or lessee of a means of transportation, who or which shall be deemed the policyholder, covering a group defined as all persons or all persons of a class who may become passengers on such common carrier or such means of transportation.

Employees,
dependents,
guests.

(2) Under a policy or contract issued to an employer, who shall be deemed the policyholder, covering all em-

ployees, dependents or guests, defined by reference to specified hazards incident to the activities or operations of the employer or any class of employees, dependents or guests similarly defined.

(3) Under a policy or contract issued to a school, or other institution of learning, camp or sponsor thereof; or to the head or principal thereof, who or which shall be deemed the policyholder, covering students or campers. Supervisors and employees may be included.

Students, campers.

(4) Under a policy or contract issued in the name of any religious, charitable, recreational, educational, or civic organization, which shall be deemed the policyholder, covering participants in activities sponsored by the organization.

Participants
in activities
sponsored by
organization.

(5) Under a policy or contract issued to a sports team or sponsors thereof which shall be deemed the policyholder, covering members, officials and supervisors.

Sports
participants.

(6) Under a policy or contract issued in the name of any volunteer fire department, first aid, or other such volunteer group, or agency having jurisdiction thereof, which shall be deemed the policyholder, covering all of the members of such fire department or group.

Fire department
and volunteer
groups.

(7) Under a policy or contract issued to cover any other risk or class of risks which, in the discretion of the commissioner may be properly eligible for blanket disability insurance. The discretion of the commissioner may be exercised on an individual risk basis or class of risks, or both.

Other risks.

Section 389. Required provisions. Any insurer authorized to write disability insurance in this state shall have the power to issue blanket disability insurance. No such blanket policy may be issued or delivered in this state unless a copy of the form thereof shall have been filed in accordance with section 271. Every such blanket policy shall contain provisions which in the opinion of the commissioner are at least as favorable to the policyholder and the individual insured as the following:

Required
provisions—
blanket disability
policies.

(1) A provision that the policy and the application shall constitute the entire contract between the parties, and that all statements made by the policyholder shall,

Application
and policy
constitute
contract.

in absence of fraud, be deemed representations and not warranties, and that no such statements shall be used in defense to a claim under the policy, unless it is contained in a written application.

Written notice
of sickness
or injury.

(2) A provision that written notice of sickness or of injury must be given to the insurer within twenty (20) days after the date when such sickness or injury occurred. Failure to give notice within such time shall not invalidate nor reduce any claim if it shall be shown not to have been reasonably possible to give such notice and that notice was given as soon as was reasonably possible.

Insurer to
furnish forms.

(3) A provision that the insurer will furnish to the policyholder such forms as are usually furnished by it for filing proof of loss. If such forms are not furnished before the expiration of fifteen (15) days after the giving of such notice, the claimant shall be deemed to have complied with the requirements of the policy as to proof of loss upon submitting within the time fixed in the policy for filing proof of loss, written proof covering the occurrence, character and extent of the loss for which claim is made.

Written
proof of loss.

(4) A provision that in the case of claim for loss of time for disability, written proof of such loss must be furnished to the insurer within thirty (30) days after the commencement of the period for which the insurer is liable, and that subsequent written proofs of the continuance of such disability must be furnished to the insurer at such intervals as the insurer may reasonably require, and that in the case of claim for any other loss, written proof of such loss must be furnished to the insurer within ninety (90) days after the date of such loss. Failure to furnish such proof within such time shall not invalidate nor reduce any claim if it shall be shown not to have been reasonably possible to furnish such proof and that such proof was furnished as soon as was reasonably possible.

Time for
payment
of benefits.

(5) A provision that all benefits payable under the policy other than benefits for loss of time will be payable immediately upon receipt of due written proof of such loss, and that, subject to due proof of loss, all accrued benefits payable under the policy for loss of time will be paid not later than at the expiration of each

period of thirty (30) days during the continuance of the period for which the insurer is liable, and that any balance remaining unpaid at the termination of such period will be paid immediately upon receipt of such proof.

(6) A provision that the insurer at its own expense, shall have the right and opportunity to examine the person of the insured when and so often as it may reasonably require during the pendency of claim under the policy and also the right and opportunity to make an autopsy in case of death where it is not prohibited by law.

Examination
of insured.

(7) A provision that no action at law or in equity shall be brought to recover under the policy prior to the expiration of sixty (60) days after written proof of loss has been furnished in accordance with the requirements of the policy and that no such action shall be brought after the expiration of three (3) years after the time written proof of loss is required to be furnished.

Time for
legal action.

Section 390. **Application and certificates not required.** An individual application shall not be required from a person covered under a blanket disability policy or contract, nor shall it be necessary for the insurer to furnish each person a certificate.

Individual
applications
and certificates
not required.

Section 391. **Insurable interest—Facility of payment.** All benefits under any blanket disability policy shall be payable to the person insured, or to his designated beneficiary or beneficiaries, or to his estate; except, that if the person insured be a minor or mental incompetent, such benefits may be made payable to his parent, guardian, or other person actually supporting him; or if the entire cost of the insurance has been borne by the employer such benefits may be made payable to the employer. Provided, however, that the policy may provide that all or any portion of any indemnities provided by such policy on account of hospital, nursing, medical or surgical services may, at the insurer's option, be paid directly to the hospital or person rendering such services; but the policy may not require that the service be rendered by a particular hospital or person. Payment so made shall discharge the insurer's obligation with respect to the amount of insurance so paid.

Insurable
interest—
facility of
payment.

CHAPTER 17 — CREDIT LIFE AND DISABILITY INSURANCE

Purpose— liberal construction.	Section 392. Purpose. The purpose of this chapter is to promote the public welfare by regulating credit life insurance and credit disability insurance. Nothing in this chapter is intended to prohibit or discourage reasonable competition. The provisions of this chapter shall be liberally construed.
Title.	Section 393. Short title. This chapter may be cited as "the model act for the regulation of credit life insurance and credit disability insurance."
Scope— credit life and credit disability insurance.	Section 394. Scope of chapter. All life insurance and all disability insurance sold in connection with loans or other credit transactions shall be subject to the provisions of this chapter except such insurance sold in connection with a loan or other credit transaction of more than five (5) years duration.
Definitions. "Credit life insurance" defined.	Section 395. Definitions. For the purposes of this chapter: (1) "Credit life insurance" means insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction;
"Credit disability insurance" defined.	(2) "Credit disability insurance" means insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy;
"Creditor" defined.	(3) "Creditor" means the lender of money or vendor or lessor of goods, services, property, rights or privileges, for which payment is arranged through a credit transaction, or any successor to the right, title or interest of such lender, vendor or lessor;
"Debtor" defined.	(4) "Debtor" means a borrower of money or a purchaser or lessee of goods, services, property, rights or privileges for which payment is arranged through a credit transaction;
"Indebtedness" defined.	(5) "Indebtedness" means the total amount payable by a debtor to a creditor in connection with a loan or other credit transaction.
Forms of policies.	Section 396. Forms of credit life insurance and credit disability insurance. Credit life insurance and credit dis-

ability insurance shall be issued only in the following forms:

- (1) Individual policies of life insurance issued to debtors on the term plan; Individual policies—life.
 - (2) Individual policies of disability insurance issued to debtors on a term plan or disability provisions in individual life policies to provide such coverage; Individual policies—disability.
 - (3) Group policies of life insurance issued to creditors providing insurance upon the lives of debtors on the term plan; Group policies—life.
 - (4) Group policies of disability insurance issued to creditors on a term plan insuring debtors, or disability provisions in group life policies to provide such coverage. Group policies—disability.
- Section 397. **Amount of credit life insurance and credit disability insurance.** (1) Credit life insurance: The amount of credit life insurance shall not exceed the indebtedness. Where indebtedness repayable in substantially equal installments is secured by an individual policy of credit life insurance the amount of insurance shall not exceed the approximate unpaid indebtedness on the date of death and, where secured by a group policy of credit life insurance shall not exceed the exact amount of unpaid indebtedness on such date. Except, that agricultural loans not exceeding one year may be written up to the amount of the loan commitment on a nondecreasing or level term plan.

(2) Credit disability insurance: The amount of periodic indemnity payable by credit disability insurance in the event of disability, as defined in the policy, shall not exceed the aggregate of the periodic scheduled unpaid installments of indebtedness and shall not exceed the original indebtedness divided by the number of periodic installments.

Section 398. **Term of credit life insurance and credit disability insurance.** The term of any credit life insurance or credit disability insurance shall, subject to acceptance by the insurer, commence on the date when the debtor becomes obligated to the creditor; except that, where a group policy provides coverage with respect to existing obligations, the insurance on a debtor with re-

Amount of life
insurance
limited to
amount of
indebtedness.

Limit—amount
of credit disability
insurance.

Term—
maturity date—
termination.

spect to such indebtedness shall commence on the effective date of the policy. The term of such insurance shall not extend more than fifteen (15) days beyond the scheduled maturity date of the indebtedness except when extended without additional cost to the debtor. If the indebtedness is discharged due to renewal or refinancing prior to the scheduled maturity date, the insurance in force shall be terminated before any new insurance may be issued in connection with the renewed or refinanced indebtedness. In all cases of termination prior to scheduled maturity, a refund shall be paid or credited as provided in section 402.

Individual policies and certificates required.

Section 399. **Provisions of policies and certificates of insurance; disclosure to debtors.** (1) All credit life insurance and credit disability insurance sold shall be evidenced by an individual policy, or in the case of group insurance by a certificate of insurance, which individual policy or group certificate of insurance shall be delivered to the debtor.

Additional required provisions.

(2) Each individual policy or group certificate of credit life insurance, and credit disability insurance shall, in addition to other requirements of law, set forth the name and home office address of the insurer, and the identity by name or otherwise of the person or persons insured, the rate or amount of payment, if any, by the debtor separately in connection with credit life insurance and credit disability insurance, a description of the coverages including any exceptions, limitations or restrictions, and shall state that the benefits shall be paid to the creditor to reduce or extinguish the unpaid indebtedness and, wherever the amount of insurance may exceed the unpaid indebtedness, that any such excess shall be payable to a beneficiary, other than the creditor, named by the debtor or to his estate.

Time of delivery of policy or certificate.

Section 400. **Delivery of policy or certificate.** (1) The individual policy or group certificate of insurance shall be delivered to the insured debtor at the time the indebtedness is incurred except as hereinafter provided.

Copy of application provisions.

(2) If the individual policy or group certificate of insurance is not delivered to the debtor at the time the indebtedness is incurred, a copy of the application for such policy or a notice of proposed insurance, signed by

the debtor and setting forth the name and home office address of the insurer, the name or names of the debtor, the amount of payment by the debtor separately in connection with credit life insurance and credit disability insurance coverage, and a brief description of the coverage provided or to be provided, shall be delivered to the debtor at the time such indebtedness is incurred. The copy of the application for, or notice of proposed insurance shall refer exclusively to insurance coverage, and shall be separate and apart from the loan, sale or other credit statement of account, instrument or agreement unless the information required by this section is prominently set forth therein. Upon approval of the application, if any, or acceptance of the insurance and within thirty (30) days of the date upon which the indebtedness is incurred, the insurer shall cause the individual policy or group certificate of insurance to be delivered to the debtor. The application or notice of proposed insurance shall state that, upon acceptance by the insurer, the insurance shall become effective as of the date the indebtedness is incurred.

Section 401. **Filing, approval and withdrawal of forms.** (1) All policies, certificates of insurance, notices of proposed insurance, applications for insurance, binders, endorsements and riders shall be filed with the commission of the state in which the policy is issued.

All forms to be filed with commission.

(2) The commissioner may within thirty (30) days after the filing of all policies, certificates of insurance, notices of proposed insurance, applications for insurance, binders, endorsements and riders, in addition to other requirements of law, disapprove any such form if the table of premium rates charged or to be charged appears by reasonable assumptions to be excessive in relation to benefits or if it contains provisions which are unjust, unfair, inequitable, misleading, deceptive or encourage misrepresentation of such policy.

Commissioner may disapprove for cause.

(3) If the commissioner notifies the insurer that the form does not comply with this section, it is unlawful thereafter for such insurer to issue or use such form. In such notice, the commissioner shall specify the reason for his disapproval and state that a hearing will be granted within twenty (20) days after request in writing

Use of unapproved forms unlawful.

Hearing after notice.

by the insurer. No such policy, certificate of insurance, notice of proposed insurance, and no application, binder, endorsement or rider, shall be issued or used until the expiration of thirty (30) days after it has been so filed, unless the commissioner gives his prior written approval thereto.

Withdrawal
of approval.

The commissioner may, at any time after a hearing, of which not less than twenty (20) days written notice was given to the insurer, withdraw his approval of any such form on any of such grounds.

Use of
disapproved
forms unlawful.

(5) It is not lawful for the insurer to issue such forms or use them after the effective date of such withdrawal of approval.

Judicial review.

(6) Any order or final determination of the commissioner under the provisions of this section shall be subject to judicial review.

Insurer must
file rates.

Section 402. Premiums and refunds. (1) Each insurer issuing credit life insurance or credit disability insurance shall file with the commissioner its schedules of premium rates for use in connection with such insurance. Any insurer may revise such schedules from time to time, and shall file such revised schedules with the commissioner. No insurer shall issue any credit life insurance policy or credit disability insurance policy for which the premium rate exceeds that determined by the schedules of such insurer as then on file with the commissioner. The commissioner may require the filing of the schedule of premium rates for use in connection with and as a part of the specific policy filings as provided by section 401.

Provision—
refund of
unused premium.

(2) Each individual policy, group certificate or notice of proposed insurance of credit life insurance and credit disability insurance shall provide that in the event of termination of the insurance prior to the scheduled maturity date of the indebtedness, any refund of premium due shall be paid or credited promptly to the person entitled thereto; provided, however, that the commissioner shall prescribe a minimum refund and no refund which would be less than such minimum need be made. The formula to be used in computing refunds shall be filed with the commissioner.

Minimum refund.

(3) If a creditor requires a debtor to make a payment in connection with credit life insurance or credit disability insurance and an individual policy or group certificate of insurance is not issued, the creditor shall immediately give written notice to such debtor and shall promptly make an appropriate credit to the account.

Duty of
creditor—
written notice.

Section 403. Issuance of policies. All policies of credit life insurance and credit disability insurance shall be delivered or issued for delivery in this state only by an insurer authorized to do an insurance business therein, and shall be issued only through holders of licenses or authorizations issued by the commissioner.

Issuance of
policies limited
to authorized
insurers.

Section 404. Claims. (1) All claims shall be promptly reported to the insurer or its designated claim representative, and the insurer shall maintain adequate claim files. All claims shall be settled as soon as possible and in accordance with the terms of the insurance contract.

Report of claims.

Time for
settlement.

(2) All claims shall be paid either by draft drawn upon the insurer or by check of the insurer to the order of the claimant to whom payment of the claim is due pursuant to the policy provisions, or upon direction of such claimant to one specified.

Method—
payment
of claims.

(3) No plan or arrangement shall be used whereby any person, firm or corporation other than the insurer or its designated claim representative shall be authorized to settle or adjust claims. The creditor shall not be designated as claim representative for the insurer in adjusting claims; except, that a group policyholder may, by arrangement with the group insurer, draw drafts or checks in payment of claims due to the group policyholder subject to audit and review by the insurer.

Settlement,
adjustment
by whom.

Section 405. Existing insurance—Choice of insurer. When credit life insurance or credit disability insurance is required as additional security for any indebtedness, the debtor shall, upon request to the creditor, have the option of furnishing the required amount of insurance through existing policies of insurance owned or controlled by him or of procuring and furnishing the required coverage through any insurer authorized to transact an insurance business within this state.

Option of
debtor—
existing
insurance.

Enforcement by
commissioner.Hearing
after notice.Order for
compliance.

Judicial review.

Penalties.

Suspension,
revocation
of license.Property
insurance—
measure of
indemnity—
replacement
value.

Section 406. **Enforcement.** The commissioner may, after notice and hearing, issue such rules and regulations as he deems appropriate for the supervision of this chapter. Whenever the commissioner finds that there has been a violation of this chapter or any rules or regulations issued pursuant thereto, and after written notice thereof and hearing given to the insurer or other person authorized or licensed by the commissioner, he shall set forth the details of his findings together with an order for compliance by a specified date. Such order shall be binding on the insurer and other person authorized or licensed by the commissioner on the date specified unless sooner withdrawn by the commissioner or a stay thereof has been ordered by a court of competent jurisdiction.

Section 407. **Judicial review.** Any party to the proceeding affected by an order of the commissioner shall be entitled to judicial review by following the procedure set forth in section 44.

Section 408. **Penalties.** In addition to any penalty provided by law, any person who violates an order of the commissioner after it has become final, and while such order is in effect, shall, upon proof thereof to the satisfaction of the court, forfeit and pay to the State of Montana a sum not to exceed two hundred and fifty dollars (\$250) which may be recovered in a civil action, except that if such violation is found to be wilful, the amount of such penalty shall be a sum not to exceed one thousand dollars (\$1,000). The commissioner, in his discretion, may revoke or suspend the license or certificate of authority of the person guilty of such violation. Such order for suspension or revocation shall be subject to judicial review as provided in section 44.

CHAPTER 18 — PROPERTY INSURANCE CONTRACTS

Section 409. **Measure of the indemnity.** If there is no valuation in the policy, and unless a basis more favorable to the insured is provided for in the policy, the measure of indemnity in an insurance against fire is the expense, at the time that the loss is payable, of replacing the thing lost or injured, in the condition in which it was at the

time of the injury; but a valuation, fraudulent in fact, entitles the insurer to rescind the contract.

Section 410. **Valued policy law.** Whenever any policy of insurance shall be written to insure any improvements upon real property in this state against loss by fire, tornado or lightning, and the property insured shall be wholly destroyed, without criminal fault on the part of the insured or his assigns, the amount of insurance written in such policy shall be taken conclusively to be the true value of the property insured, and the true amount of loss and measure of damages, and the payment of money as a premium for insurance shall be prima facie evidence that the party paying such insurance premium is the owner of the property insured; provided, that any insurance company may set up fraud in obtaining the policy as a defense to a suit thereon.

Valued policy
law—
Measure of
indemnity—
total amount
for total loss.

Defense—fraud.

CHAPTER 19 — CASUALTY INSURANCE CONTRACTS

Section 411. **Waiver of defense of sovereign immunity required.** All contracts or policies of casualty insurance covering state-owned properties or state risks must contain therein as a part thereof an agreement on the part of the insurer waiving all right to raise the defense of sovereign immunity. No money shall be paid out of the state treasury to any person, firm or corporation, as a consideration or premium on any such policy or contract of casualty insurance unless the policy or contract contains such an agreement.

Provision—
casualty insurance
on state
property—
waiver of
governmental
immunity.

CHAPTER 20 — SURETY INSURANCE CONTRACTS

Section 412. **Rights of surety insurer.** A surety insurer authorized as such under this code shall have the power to become the surety on bonds and undertakings required by law, subject to all the rights and liabilities of private persons. This section shall not be deemed to limit in any way the powers, obligations and liabilities of such insurers as provided for in other provisions of this code.

Rights of
authorized
surety insurer.

Section 413. **May be sole surety on official bonds.** Whenever any bond, undertaking, recognizance, or other obligation is by law, or the charter, ordinance, rules or regulations of any municipality, board, body, organiza-

May be sole
surety on
official bonds.

tion or public officer, required or permitted to be made, given, tendered or filed, with surety or sureties, and whenever the performance of any act, duty or obligation, or the refraining from any act, is required or permitted to be guaranteed, such bond, undertaking, obligation, recognizance or guaranty may be executed by a surety insurer qualified to act as surety or guarantor as in this code provided. Such execution by such insurer of such bond, undertaking, obligation, recognizance or guaranty shall be in all respects a full and complete compliance with every requirement of the law, charter, ordinance, rule or regulation, that such bond, undertaking, obligation, recognizance or guaranty shall be executed by one surety or by one or more sureties, or that such surety shall be a resident, or householder, or freeholder, or either or both, or possessed of any other qualifications; and all courts, judges, heads of departments, boards, bodies, municipalities, and public officers of every character shall accept and treat accordingly such bond, undertaking, obligation, recognizance or guaranty when so executed by such insurer, as conforming to and fully and completely complying with every such requirement of every such law, charter, ordinance, rule or regulation.

Effect of
execution.

Release from
liability.

Section 414. Release from liability on official bonds. A surety insurer may be released from its liability on a bond referred to in section 413 of this chapter upon the same terms and conditions as are by law prescribed for the release of individual sureties.

CHAPTER 21 — TITLE INSURANCE

Title insurance
policy based
on certified
evidence of title.

Section 415. Policy based on title evidence. (1) No title insurance policy as to property in this state shall be issued by any insurer unless based upon evidence of the condition of title certified in writing as of the date of the policy by some person, firm, or corporation holding a certificate of authority issued under section 66-2111, Revised Codes of Montana, 1947, to engage in the title abstracting business in the county in which the property is located; except, that this provision shall not apply as to title insurance policies issued upon the basis of an opinion of an attorney, duly authorized to practice law in this state, as to the condition of the title following a review by such attorney of pertinent title records or abstracts, and issued through a licensed title insurance agent who

was so licensed and was regularly procuring title insurance policies issued upon such basis up to the effective date of this code.

(2) An insurer issuing any policy in violation of this section is estopped, as a matter of law, to deny the validity of the policy as to any claim or demand of the insured or assigns arising thereunder.

Violation—
estoppel.

Section 416. Rates filed with commissioner. (1) Every title insurer shall file with the Commissioner a complete schedule of risk rates to be charged by it for title insurance as to property located in this state.

Title insurance
rates must
be filed.

(2) No such rate shall be excessive, inadequate, or unreasonably discriminatory.

(3) No title insurer shall charge any rate for such insurance other than the applicable rate previously filed by it with the Commissioner.

(4) Title insurers lawfully transacting business in this state on the effective date of this code shall comply with the provisions of this section within ninety (90) days thereafter.

Time for
compliance.

Section 417. Guaranty fund, investments of title insurer. A title insurer shall establish and maintain the guaranty fund required under section 91 of this code, and may invest in necessary plant and equipment and in other investments as authorized under section 129.

Duty of title
insurer to
establish
guaranty fund.

CHAPTER 22 — ORGANIZATION AND CORPORATE PROCEDURES OF STOCK AND MUTUAL INSURERS

Organization,
corporate
procedures—
stock and
mutual insurers.

Section 418. Scope of chapter. This chapter shall apply only to domestic stock insurers and domestic mutual insurers transacting, or proposing to transact, insurance on the cash premium or legal reserve plan, except that sections 431 (membership in mutuals) and 449 (2) (non-assessable policies, mutual insurers) shall also apply to foreign and alien insurers.

Section 419. "Stock" insurer defined. A domestic "stock" insurer is an incorporated insurer with capital divided into shares and owned by its stockholders.

"Stock" insurer
defined.

Section 420. "Mutual" insurer defined. A domestic "mutual" insurer is an incorporated insurer without capi-

"Mutual" insurer
defined.

tal stock, and the governing body of which is elected by the policyholders.

Section 421. Applicability of general corporation statutes.

Applicable
corporation
laws apply.

The applicable laws of this state as to domestic corporations formed for profit shall apply as to domestic stock insurers and domestic mutual insurers, except where in conflict with the express provisions of this code and the reasonable implications of such provisions.

Incorporation.

Section 422. Incorporation. (1) This section applies to stock and mutual insurers hereafter incorporated in this state.

Incorporators.

(2) Incorporators. Five (5) or more individuals, none of whom are less than twenty-one (21) years of age, may incorporate a stock insurer; ten (10) or more of such individuals may incorporate a mutual insurer. At least a majority of the incorporators shall be citizens of the United States. At least a majority of the incorporators shall be residents of this state.

Articles of
incorporation—
purpose of
corporation.

(3) Articles of incorporation. The incorporators shall execute articles of incorporation in quadruplicate and acknowledge their execution thereof in the same manner as provided by law for the acknowledgment of deeds. The articles of incorporation shall state the purpose for which the corporation is formed and shall show:

Name of
corporation.

(a) The name of the corporation; if a mutual, the word "mutual" must be a part of the name. An alternative name or names may be specified for use in jurisdictions wherein conflict of name with that of another insurer or organization might otherwise prevent the corporation from being authorized to transact insurance therein.

Duration may
be perpetual.

(b) The duration of its existence, which may be perpetual.

Kinds of
insurance.

(c) The kinds of insurance, as defined in this code, which the corporation is formed to transact.

Stock
corporation—
capital stock—
par value.

(d) If a stock corporation, its authorized capital stock, the number of shares of common stock into which divided, the par value of each such share, which par value shall be at least one dollar (\$1). Shares without par

value, or other than one class of voting common stock, shall not be authorized. The articles of incorporation may limit or deny present or future stockholders preemptive or preferential rights to acquire additional issues of the stock, or bonds, debentures or other obligations convertible into stock, of the corporation, subject to the constitution and laws of Montana fixing the required representation and proportion of outstanding capital stock required to be represented and voted, for specified action, at any and all corporate meetings, elections, votes or consent proceedings.

Permissive
limitation.

(e) If a stock corporation, the extent, if any, to which shares of its stock are subject to assessment.

Assessment,
if any.

(f) If a stock corporation, the number of shares subscribed, if any, by each incorporator.

Number
of shares
subscribed.

(g) If a mutual corporation, the maximum contingent liability of its members, other than as to nonassessable policies, for payment of losses and expenses incurred; such liability shall be stated in the articles of incorporation, but shall not be less than one (1) nor more than six (6) times the premium for the member's policy at the annual premium rate for a term of one (1) year.

Mutual
corporation—
maximum
contingent liability
of members.

(h) The minimum, not less than five (5), and the maximum, not more than twenty-one (21), number of directors who shall constitute the board of directors and conduct the affairs of the corporation; also, the names, addresses and terms of the members of the initial board of directors. The term of office of initial directors shall be for not more than one (1) year after the date of incorporation.

Number
of directors.

(i) The name of the county, and the city, town or place within the county, in which its principal office or principal place of business is to be located in this state.

Principal place
of business.

(j) Such other provisions, not inconsistent with law, deemed appropriate by the incorporators.

Other lawful
provisions.

(k) The name and residence address of each incorporator, and the citizenship of each incorporator who is not a citizen of the United States.

Incorporators—
name, address,
citizenship.

Section 423. Articles of incorporation, filing and approval.

Filing and
approval
of articles.

(1) The incorporators of a proposed domestic insurer shall deliver the quadruplicate originals of the articles of incorporation to the Commissioner together with the filing fees therefor specified in section 45. The commissioner shall submit the quadruplicate originals of the proposed articles of incorporation to the attorney general for examination. If the attorney general finds that the articles comply with this chapter, and are not in conflict with the constitution and laws of the United States or of this state, he shall so certify and return such certificate and all sets of the articles to the commissioner.

Certification by
attorney general.

Approval by
commissioner.

(2) When the articles of incorporation have been approved by the attorney general, the commissioner shall also endorse his approval upon each set of the articles; except, that if the Commissioner finds that the proposed insurer would not be eligible for a certificate of authority under section 55 of this code (management and affiliations), he shall refuse to approve the articles of incorporation, and shall return them to the proposed incorporators together with a written statement of the reasons for such refusal. If approved by him, the Commissioner shall then forward the articles of incorporation with his approval endorsed thereon, together with the certificate of the attorney general, to the incorporators. The incorporators shall forthwith file one set of the articles of incorporation with the secretary of state, one set with the commissioner bearing the certification of the secretary of state, one set with the county clerk of the county wherein is to be located the corporation's principal place of business, and the remaining set of articles and the certificate of the attorney general shall be made a part of the corporation's record.

Filing of copies.

Disapproval by
attorney general.

(3) If the attorney general finds that the proposed articles of incorporation do not comply with law, he shall refuse to approve the same, and shall return the quadruplicate sets thereof to the commissioner, together with a written statement of the reasons for his refusal to approve. The commissioner shall return all sets of the proposed articles of incorporation to the proposed incorporators together with the written statement of the attorney general.

Certificate
of authority
required to
transact business.

(4) The corporation shall have legal existence as such upon the issuance of the certificate of incorporation by the secretary of state and the completion of the filings

referred to in subsection (2) above, but it shall not transact business as an insurer until it has qualified for and received from the commissioner a certificate of authority as provided in this code.

(5) A copy of the certificate of incorporation, duly certified by the secretary of state, shall be admissible in all the courts of this state as prima facie evidence of due incorporation.

Copy as evidence.

Section 424. Amendment of articles of incorporation.

Procedure—
amendment
of articles.

(1) A domestic stock insurer may amend its articles of incorporation for any lawful purpose by written authorization of the holders of a majority of the voting power of its outstanding capital stock or by affirmative vote of such a majority voting at a lawful meeting of stockholders of which the notice given to stockholders included due notice of the proposal to amend.

(2) A domestic mutual insurer heretofore or hereafter formed may amend its articles of incorporation for any lawful purpose by affirmative vote of a majority of those of its members present or represented by proxy at a lawful meeting of its members of which the notice given members included due notice of the proposal to amend.

(3) Upon adoption of such an amendment the insurer shall make in quadruplicate under its corporate seal a certificate (sometimes referred to as "articles of amendment") setting forth such amendment and the date and manner of the adoption thereof, which certificate shall be executed by the insurer's president or vice-president and secretary or assistant secretary and acknowledged by them before an officer authorized by law to take acknowledgments of deeds. The insurer shall deliver to the commissioner the quadruplicate originals of the certificate, together with the filing fee specified therefor in section 45. If he finds that the certificate and amendments comply with law, the commissioner shall endorse his approval upon each of the quadruplicate originals and return them to the insurer. The insurer shall forthwith file one set of such endorsed articles of amendment with the secretary of state, one set with the commissioner bearing the certification of the secretary of state, one set with the county clerk of the county in which is located the insurer's principal place of business, and retain the remaining

Filing—
certificate of
amendment.

Approval by
commissioner.

set in the corporate records. The amendment shall be effective when such filings have been completed.

Disapproval by commissioner.

(4) If the commissioner finds that the proposed amendment or certificate does not comply with the law, he shall not approve the same, and shall return the quadruplicate certificate of amendment to the insurer together with his written statement of reasons for non-approval. The filing fee shall not be returnable.

Cause for disapproval.

(5) If an amendment of articles of incorporation would reduce the authorized capital stock of a stock insurer below the amount thereof then outstanding, the commissioner shall not approve the amendment if he has reason to believe that the interests of policyholders or creditors of the insurer would be materially prejudiced by such reduction. If any such reduction of capital stock is effectuated the insurer may require return of the original certificates of stock held by each stockholder for exchange for new certificates for such number of shares as such stockholder is then entitled in the proportion that the reduced capital bears to the amount of capital stock outstanding as of immediately prior to the effective date of such reduction.

Exchange of stock certificates.

Qualifications—mutual insurer.

Section 425. **Initial qualifications—Domestic mutuals.**

(1) When newly organized, a domestic mutual insurer may be authorized to transact any one of the kinds of insurance listed in the schedule contained in subsection (2) of this section.

(2) When applying for an original certificate of authority, the insurer must be otherwise qualified therefor under this code, and must have received and accepted bona fide applications as to substantial insurable subjects for insurance coverage of a substantial character of the kind of insurance proposed to be transacted, must have collected in cash the full premium therefor at a rate not less than that usually charged by stock insurers for comparable coverages, must have surplus funds on hand and deposited as of the date such insurance coverages are to become effective, or, in lieu of such applications, premiums and surplus, may deposit surplus, all in accordance with that part of the following schedule which applies to the one kind of insurance the insurer proposes to transact:

Deposit.

Schedules—
deposit of surplus.

(a) Kind of insurance	(b) Minimum No. of applicants accepted	(c) Minimum No. of subjects covered	(d) Minimum premium collected	(e) Minimum amount of insurance each subject	(f) Maximum amount of insurance each subject	(g) Minimum surplus funds deposited	(h) Deposit of surplus in lieu of (vi)
Life (i)	500	500	annual	\$1,000	\$2,500	\$50,000	\$100,000
Disability (ii)	500	500	quarterly	\$10 (weekly indem.)	\$25 (weekly indem.)	\$50,000	\$100,000
Property (iii)	100	250	annual	\$1,000	\$3,000	\$100,000	\$200,000
Casualty (iv)	250	500	annual	\$1,000	\$10,000	\$150,000	\$200,000
With workmen's compensation	250	1,500	quarterly	\$1,000	\$10,000	\$200,000	\$300,000

Limitations—
deposit schedule.

The following provisos are respectively applicable to the foregoing schedule and provisions as indicated by like roman numerals appearing in such schedule:

(i) No group insurance or term policies for terms of less than ten (10) years shall be included.

(ii) No group, blanket or family plans of insurance shall be included. In lieu of weekly indemnity a like premium value in medical, surgical and hospital benefits may be provided. Any accidental death or dismemberment benefit provided shall not exceed twenty-five hundred dollars (\$2,500).

(iii) Only insurance of the owner's interest in real property may be included.

(iv) Must include insurance of legal liability for bodily injury and property damage, to which the maximum and minimum insured amounts apply.

(v) The maximums provided for in this column (f) are net of applicable reinsurance.

(vi) The deposit of surplus in the amount specified in columns (g) and (h) must thereafter be maintained unimpaired. The deposit is subject to the provisions of chapter 7 of this code (administration of deposits).

Section 426. Formation of mutual insurer — Bond.

(1) Before soliciting any applications for insurance required under section 425 as qualification for the original certificate of authority, the incorporators of the proposed insurer shall file with the commissioner a corporate surety bond in the penalty of fifteen thousand dollars (\$15,000), in favor of the state and for the use and benefit of the state and of applicant members and creditors of the corporation. The bond shall be conditioned as follows:

(a) For the prompt return to applicant members of all premiums collected in advance;

(b) For payment of all indebtedness of the corporation; and

(c) For payment of costs incurred by the state in event of any legal proceedings for liquidation or dissolution of the corporation, all in the event the corpora-

tion fails to complete its organization and secure a certificate of authority within one year from after the date of its certificate of incorporation.

(2) In lieu of such bond, the incorporators may deposit with the commissioner fifteen thousand dollars (\$15,000) in cash or United States government bonds, negotiable and payable to the bearer, with a market value at all times of not less than fifteen thousand dollars, (\$15,000) to be held in trust upon the same conditions as required for the bond.

(3) Any such bond filed or deposit or remaining portion thereof held under this section shall be released and discharged upon settlement and termination of all liabilities against it.

Section 427. Applications for insurance in formation of mutual insurer. (1) Upon receipt of the commissioner's approval of the bond or deposit as provided in section 426, the directors and officers of the proposed domestic mutual insurer may commence solicitation of such requisite applications for insurance policies as they may accept, and may receive deposits of premiums thereon.

(2) All such applications shall be in writing signed by the applicant, covering subjects of insurance resident, located or to be performed in this state.

(3) All such applications shall provide that:

(a) Issuance of the policy is contingent upon the insurer qualifying for and receiving a certificate of authority;

(b) No insurance is in effect unless and until the certificate of authority has been issued; and

(c) The prepaid premium or deposit, and membership or policy fee, if any, shall be refunded in full to the applicant if organization is not completed and the certificate of authority is not issued and received by the insurer before a specified reasonable date which date shall be not later than one year after the date of the certificate of incorporation.

(4) All qualifying premiums collected shall be in cash.

Deposit in
lieu of bond.

Bond deposit—
release.

Required
provisions
applications.

Surety bond
of mutual insurer
required.

Bond conditions.

Solicitations by
licensed agents.

(5) Solicitation for such qualifying applicants for insurance shall be by licensed agents of the corporation, and the commissioner shall, upon the corporation's application therefor, issue temporary agent's licenses expiring on the date specified pursuant to subdivision (c) above to individuals qualified as for a resident agent's license except as to the taking or passing of an examination. The commissioner may suspend or revoke any such license for any of the causes and pursuant to the same procedures as are applicable to suspension or revocation of licenses of agents in general under chapter 8 of this code.

Trust fund.

Section 428. **Formation of mutuals — Trust deposit of premiums — Issuance of policies.** (1) All sums collected by a domestic mutual corporation as premiums or fees on qualifying applications for insurance therein shall be deposited in trust in a bank or trust company in this state under a written trust agreement consistent with this section and with section 427 (3) (c). The corporation shall file an executed copy of such trust agreement with the commissioner.

Written trust
agreement.

Funds of insurer
after issue
of certificate
of authority.

(2) Upon issuance to the corporation of a certificate of authority as an insurer for the kind of insurance for which such applications were solicited, all funds so held in trust shall become the funds of the insurer, and the insurer, shall thereafter in due course issue and deliver its policies for which premiums had been paid and accepted. The insurance provided by such policies shall be effective as of the date of the certificate of authority or thereafter as provided by the respective policies.

Corporate powers
cease on failure
to qualify.

Section 429. **Formation of mutuals — Failure to qualify.** If the proposed domestic insurer fails to complete its organization and to secure its original certificate of authority within one year from and after date of its certificate of incorporation, its corporate powers shall cease, and the commissioner shall return or cause to be returned to the persons entitled thereto all advance deposits or payments of premiums held in trust under section 428.

Authority
to transact
additional kinds
of insurance.

Section 430. **Additional kinds of insurance, mutuals.** A domestic mutual insurer, after being authorized to transact one kind of insurance, may be authorized by the

commissioner to transact such additional kinds of insurance as are permitted under section 51, while otherwise in compliance with this code and while maintaining unimpaired surplus funds in an amount not less than the amount of paid-in capital stock required of a domestic stock insurer transacting like kinds of insurance, subject further to the additional expendable surplus requirements of section 53 applicable to such a stock insurer.

Section 431. **Membership in mutuals.** (1) Each policyholder of a domestic mutual insurer, other than of a reinsurance contract, is a member of the insurer with all rights and obligations of such membership, and the policy shall so specify.

Membership
in mutuals.
Policyholders.

(2) Any person, government or governmental agency, state or political subdivision thereof, public or private corporation, board, association, firm, estate, trustee or fiduciary may be a member of a domestic, foreign, or alien mutual insurer. Any officer, stockholder, trustee or legal representative of any such corporation, board, association or estate may be recognized as acting for or on its behalf for the purpose of such membership, and shall not be personally liable upon any contract of insurance for acting in such representative capacity.

Other members.

(3) Any domestic corporation may participate as a member of a mutual insurer as an incidental purpose for which such corporation is organized, and as much granted as the rights and powers expressly conferred.

Domestic
corporations
as members.

Section 432. **Bylaws of mutual.** (1) A domestic mutual insurer shall have bylaws for the governing of its affairs. The initial board of directors of the insurer shall adopt original bylaws, subject to the approval of the insurer's members at the next succeeding meeting. The members shall have power to make, modify and revoke bylaws.

By laws
of mutuals.

(2) The bylaws shall provide:

Provisions
required—
voting power.

(a) That each member is entitled to one vote upon each matter coming to a vote at meetings of members; or to more votes in accordance with a reasonable classification of members as set forth in the bylaws and based upon the amount of insurance in force, number of policies held or upon the amount of the premiums paid by

such member, or upon other reasonable factors. A member shall have the right to vote in person or by his written proxy. No such proxy shall be made irrevocable or for longer than a reasonable period of time;

Election of directors.

(b) For election of directors by the members, and the number, qualifications, terms of office and powers of directors;

Meetings.

(c) The time, notice, quorum, and conduct of annual and special meetings of members and voting thereat. The bylaws may provide that the annual meeting shall be held at a place, date and time to be set forth in the policy and without giving other notice of such meeting;

Corporate officers.

(d) The number, designation, election, terms and powers and duties of the respective corporate officers;

Corporate funds.

(e) For deposit, custody, disbursement and accounting as to corporate funds;

Management.

(f) For any other reasonable provisions customary, necessary or convenient for the management or regulation of its corporate affairs.

Majority vote.

(3) No provision in the bylaws for determining a quorum of members at any meeting thereof of less than a majority of all the insurer's members shall be effective unless approved by the commissioner. This subsection shall not effect any other provision of law requiring vote of a larger percentage of members for a specified purpose.

Duty to file bylaws.

(4) The insurer shall promptly file with the commissioner a copy, certified by the insurer's secretary, of its bylaws and of every modification thereof or addition thereto. The commissioner shall disapprove any bylaw provision deemed by him to be unlawful, unreasonable, inadequate, unfair or detrimental to the proper interests or protection of the insurer's members or any class thereof. The insurer shall not, after receiving written notice of such disapproval and during the existence thereof, effectuate any bylaw provision so disapproved.

Bylaws of stock insurers—authority to modify.

Section 433. **Bylaws of stock insurer; modification.** Any bylaw so adopted at any meeting of stockholders of a domestic insurer shall not be modified or revoked except by the stockholders at a subsequent meeting un-

less the bylaws as adopted or amended by the stockholders grants authority to the board of directors to revoke or modify bylaw provisions; but the board of directors shall not so revoke or modify any bylaw relating to the qualifications, election, terms, or compensation of directors, or to the calling or notice of meetings of stockholders. Any revocation or modification of bylaws made by the directors under this provision shall be presented at the next following meeting of stockholders for the information of the stockholders.

Section 434. **Meetings of stockholders or members.**

Meetings.

(1) Meetings of stockholders or members of a domestic insurer shall be held in the city or town of its principal office or place of business in this state.

Place.

(2) No meeting of stockholders or members shall amend the insurer's articles of incorporation unless the proposal so to amend was included in the notice of the meeting.

Notice.

(3) Each insurer shall, during the first six (6) months of each calendar year, hold the annual meeting of its stockholders or members, to fill vacancies existing or occurring in the board of directors, receive and consider reports of the insurer's officers as to its affairs, and transact such other business as may properly be brought before it. Not less than twenty (20) days notice shall be given of such meeting in the manner provided in the bylaws, except where notice of the annual meeting of a mutual insurer is contained in its policies.

Annual meeting.

Notice.

(4) Special meetings of the stockholders or members may be called at any time for any purpose by the board of directors, upon not less than ten days notice as provided in the bylaws. The notice shall state the purpose of the meeting, and no business shall be transacted at the meeting of which notice was not so given.

Special meetings.

Notice.

(5) If more than fifteen (15) months are allowed to elapse without an annual stockholders' or members' meeting being held, any stockholder or member may call such a meeting to be held. At any time, upon written request of any director, or of any stockholders or members holding in the aggregate one-fifth of the voting power of all stockholders or members, it shall be the duty

Who may call meetings.

of the secretary to call a special meeting of stockholders or members to be held at such time as the secretary may fix, not less than ten (10) nor more than thirty (30) days after the receipt of the request. If the secretary fails to issue such call, the director, stockholders or members making the request may do so.

Quorum.

(6) A stockholders' or members' meeting duly held can be organized for the transaction of business whenever a quorum is present. Except as otherwise provided by law or the articles of incorporation:

Majority voting power constitutes quorum.

(a) The presence, in person or by proxy, of the holders of a majority of the voting power of all stockholders or of all members shall constitute a quorum;

Withdrawal from meeting.

(b) The stockholders or members present at a duly organized meeting can continue to do business until adjournment, notwithstanding the withdrawal of enough stockholders or members to leave less than a quorum;

Temporary election.

(c) If any necessary officer fails to attend such meeting, any stockholder or member present may be elected to act temporarily in lieu of any such absent officer;

Adjournment.

(d) If a meeting cannot be organized because a quorum has not attended, those present may adjourn the meeting to such time as they may determine, but in the case of any meeting called for the election of any director the adjournment must be to the next day and those who attend the second of such adjourned meetings, although less than a quorum as fixed in this section or in the articles of incorporation, shall nevertheless constitute a quorum for the purpose of electing any director; and

New notice not required.

(e) An annual or special meeting of stockholders or members may be adjourned to another date without new notice being given.

Proxies.

Section 435. **Proxies.** (1) Every proxy of a stockholder of an insurer, unless coupled with an interest, shall be revocable at will and this provision cannot be waived. The validity of every unrevoked proxy shall cease eleven (11) months after the date of its execution unless some other definite period of validity is expressly provided therein, but in no event shall a proxy, unless

Limitation on validity.

coupled with an interest, be voted on after three (3) years from the date of its execution.

(2) The revocation of a proxy shall not be effective until notice thereof has been given to the secretary of the insurer.

Revocation.

Section 436. **Corrupt practices — Penalty.** No person shall buy or sell or barter a vote or proxy, relative to any meeting of stockholders or members of an insurer, or engage in any corrupt or dishonest practice in or relative to the conduct of any such meeting. Violation of this section shall be punishable as provided in section 17 of this code.

Penalties—
corrupt practices.

Section 437. **Directors; number, election.** (1) The affairs of every domestic insurer shall be managed by the number of directors fixed in the insurer's bylaws, which shall not be less than five (5) nor more than twenty-one (21) directors.

Number
of directors.

(2) Directors must be elected from and by the members or stockholders of a domestic insurer, except as provided in section 438 of this chapter, at such time and place, and for such terms, not exceeding three (3) years, as may be provided in the insurer's bylaws.

Election.

(3) The term of a director shall extend until his successor has been elected and has qualified.

Term.

Section 438. **Participation of policyholders in election of directors of stock insurer.** The bylaws of a domestic stock life insurer may provide a plan for its policyholders to participate with stockholders in the election of its directors.

Participation of
policyholders
in election
of directors.

Section 439. **Bond of officers of mutual.** (1) The president, secretary and treasurer of every mutual insurer shall each file with the commissioner and thereafter maintain in force so long as he is such an officer, a fidelity bond in the sum of ten thousand dollars (\$10,000) issued by an authorized corporate surety in favor of the insurer. In lieu of individual bonds, all such officers may be covered under a blanket bond for the same respect amounts, and which blanket bond shall likewise be filed with the commissioner.

Officers' bonds—
mutual insurers.

Payment of
bond premium.

(2) The premium for the bond shall be payable by the insurer.

Notice—
cancellation
of bond.

(3) No such bond shall be subject to cancellation except upon written notice to both the insurer and the commissioner, delivered not less than thirty (30) days in advance of the effective date of such cancellation.

Bonds—
other officers.

(4) The insurer shall provide for the bonding by authorized corporate surety of all other officers in any way responsible for the handling of the funds of the insurer.

Limitation
on bonds.

(5) This section shall not be deemed to limit the amount of bonded protection which the insurer may carry as to any officer.

Duties of
officers and
directors
handling funds.

Section 440. Prohibited pecuniary interest of officials.

(1) Any officer or director, or any member of any committee or an employee of a domestic insurer who is charged with the duty of investing or handling the insurer's funds shall not deposit or invest such funds except in the insurer's corporate name; shall not borrow the funds of such insurer; shall not be pecuniarily interested in any loan, pledge of deposit, security, investments, sale, purchase, exchange, reinsurance, or other similar transaction or property of such insurer except as a stockholder or member; shall not take or receive to his own use any fee, brokerage, commission, gift, or other consideration for or on account of any such transaction made by or on behalf of such insurer.

Guarantee
prohibited.

(2) No insurer shall guarantee any financial obligation of any of its officers or directors.

Officers, directors
may be
policyholders.

(3) This section shall not prohibit such a director or officer, or member of a committee or employee from becoming a policy holder of the insurer and enjoying the usual rights so provided for its policyholders.

Commissioner
may define
exceptions to
prohibitions.

(4) The commissioner may, by regulations from time to time, define and permit additional exceptions to the prohibition contained in subsection (1) of this section solely to enable payment of reasonable compensation to a director who is not otherwise an officer or employee of the insurer, or to a corporation or firm in which a director is interested, for necessary services performed

or sales or purchases made to or for the insurer in the ordinary course of the insurer's business and in the usual private professional or business capacity of such director or such corporation or firm.

Section 441. Management and exclusive agency contracts. (1) No domestic insurer shall make any contract whereby any person is granted or is to enjoy in fact the management of the insurer to the substantial exclusion of its board of directors, or to have the controlling or pre-emptive right to produce substantially all insurance business for the insurer, unless the contract is filed with and approved by the commissioner. The contract shall be deemed approved unless disapproved by the commissioner within twenty (20) days after date of filing, subject to such reasonable extension of time as the commissioner may require by notice given within such twenty (20) days. Any disapproval shall be delivered to the insurer in writing, stating the grounds therefor.

Approval of
exclusive
management
and agency
contracts.

Filing.

Disapproval
for cause.

(2) The commissioner shall disapprove any such contract if he finds that it:

- (a) Subjects the insurer to excessive charges; or
- (b) Is to extend for an unreasonable length of time; or
- (c) Does not contain fair and adequate standards of performance; or
- (d) Contains other inequitable provision or provisions which impair the proper interests of stockholders or members of the insurer.

Section 442. Home office and records; penalty for unlawful removal of records. (1) Every domestic insurer shall have and maintain its principal place of business and home office in this state, and shall keep therein complete records of its assets, transactions, and affairs in accordance with such methods and systems as are customary or suitable as to the kind or kinds of insurance transacted.

Home office
and records.

(2) Every domestic insurer shall have and maintain its assets in this state, except as to:

Assets.

- (a) Real property and personal property appurtenant

Property
outside state.

thereto lawfully owned by the insurer and located outside this state, and

Branch office property.

(b) Such property of the insurer as may be customary, necessary, and convenient to enable and facilitate the operation of its branch offices and "regional home offices" located outside this state as referred to in subsection (4) below.

Penalty for unlawful removal.

(3) Removal of all or a material part of the records or assets of a domestic insurer from this state except pursuant to a plan of merger or consolidation approved by the commissioner under this code, or for such reasonable purposes and periods of time as may be approved by the commissioner in writing in advance of such removal, or concealment of such records or assets or material part thereof from the commissioner, is prohibited. Any person who removes or attempts to remove such records or assets or such material part thereof from the home office or other place of business or of safekeeping of the insurer in this state with the intent to remove the same from this state, or who conceals or attempts to conceal the same from the commissioner, in violation of this subsection, shall upon conviction thereof be guilty of a felony, punishable by a fine of not more than ten thousand dollars (\$10,000) or by imprisonment in the penitentiary for not more than five (5) years, or by both such fine and imprisonment in the discretion of the court. Upon any removal or attempted removal of such records or assets or upon retention of such records or assets or material part thereof outside this state, beyond the period therefor specified in the commissioner's consent under which the records were so removed thereat, or upon concealment of or attempt to conceal records or assets in violation of this section, the commissioner may institute delinquency proceedings against the insurer pursuant to the provisions of chapter 26 of this code.

Delinquency proceedings.

(4) This section shall not be deemed to prohibit or prevent an insurer from:

Officers in other jurisdictions.

(a) Establishing and maintaining branch offices or "regional home offices" in other states where necessary or convenient to the transaction of its business and keeping therein the detailed records and assets customary

and necessary for the servicing of its insurance in force and affairs in the territory served by such an office, as long as such records and assets are made readily available at such office for examination by the commissioner at his request.

(b) Having, depositing or transmitting funds and assets of the insurer in or to jurisdictions outside of this state as reasonably and customarily required in the regular course of its business.

Funds in other jurisdictions.

(c) Making deposits under custodial arrangements as provided by section 135 (3) of this code.

Deposits.

Section 443. **Vouchers for expenditures.** (1) No insurer shall make any disbursement of one hundred dollars (\$100) or more, unless evidenced by a voucher correctly describing the consideration for the payment and supported by a check or receipt endorsed or signed by or on behalf of the person receiving the money.

Vouchers for expenditures.

(2) If the disbursement is for services and reimbursement, the voucher shall describe the services and expenditures.

Required provisions.

(3) If the disbursement is in connection with any matter pending before any legislature or public body or before any public official, the voucher shall also correctly describe the nature of the matter and of the insurer's interest therein.

(4) If a voucher cannot be obtained, the expenditure referred to in subsection (1) above shall be evidenced by an affidavit in which is set forth the character and object of the expenditure and the reasons for not obtaining a voucher therefor.

Affidavit for voucher.

Section 444. **Agreement not to sell property prohibited.** No insurer shall enter into any agreement to withhold from sale any of its property. Disposition of an insurer's property shall be at all times within the control of its board of directors.

Agreements not to sell property prohibited.

Section 445. **Solicitations in other states.** (1) No domestic insurer shall knowingly solicit insurance business in any reciprocating state in which it is not then licensed as an authorized insurer.

Solicitation of insurance—other states.

Advertising
permitted.

(2) This section shall not prohibit advertising through publication and radio, television and other broadcasts originating outside such reciprocating state, if the insurer is licensed in a majority of the states in which such advertising is disseminated, and if such advertising is not specifically directed to residents of such reciprocating state.

Reciprocating
states.

(3) This section shall not prohibit insurance, covering persons or risks located in a reciprocating state, under contracts solicited and issued in states in which the insurer is then licensed. Nor shall it prohibit insurance effectuated by the insurer as an unauthorized insurer in accordance with the laws of the reciprocating state.

"Reciprocating"
defined.

(4) A "reciprocating" state, as used herein, is one under the laws of which a similar prohibition is imposed upon and enforced against insurers domiciled in that state.

Violation.

(5) The commissioner shall suspend or revoke the certificate of authority of a domestic insurer found by him, after a hearing, to have violated this section.

Contingent
liability—
mutual members.

Section 446. Contingent liability of mutual members.

(1) Each member of a domestic mutual insurer shall, except as otherwise hereinafter provided with respect to nonassessable policies, have a contingent liability, pro rata and not one for another, for the discharge of its obligations, which contingent liability shall be expressed in the policy and be in such maximum amount as is specified in the insurer's articles of incorporation.

Termination.

(2) Termination of the policy of any such member shall not relieve the member of contingent liability for his proportion, if any, of the obligations of the insurer which accrued while the policy was in force.

Not an asset.

(3) Unrealized contingent liability of members does not constitute an asset of the insurer in any determination of its financial condition.

Levy of
assessment.

Section 447. Levy of contingent liability. (1) If at any time the assets of a domestic mutual insurer are less than its liabilities and the minimum amount of surplus required to be maintained by it by this code for

authority to transact the kinds of insurance being transacted, and the deficiency is not cured from other sources, its directors shall levy an assessment only upon its members who held policies providing for contingent liability at any time within the twelve (12) months preceding the date notice of such assessment was mailed to them, and such members shall be liable to the insurer for the amount so assessed.

(2) The assessment shall be for such an amount as is required to cure such deficiency and to provide a reasonable amount of working funds above such minimum amount of surplus, but such working funds so provided shall not exceed five percent (5%) of the insurer's liabilities as of the date as of which the amount of such deficiency was determined.

Amount of
assessment.

(3) In levying an assessment upon a policy providing for contingent liability, the assessment shall be computed on the basis of the premiums earned on such policy during the period to which the assessment relates.

Computation.

(4) No member shall have an offset against any assessment for which he is liable, on account of any claim for unearned premium or loss payable.

Offset.

(5) As to life insurance, any part of such an assessment upon a member which remains unpaid following notice of assessment, demand for payment, and lapse of a reasonable waiting period as specified in such notice, may, if approved by the commissioner as being in the best interests of the insurer and its members, be secured by placing a lien upon the cash surrender values and accumulated dividends held by the insurer to the credit of such member.

Lien on life
insurance.

Section 448. Enforcement of contingent liability. (1) Any assessment made by an insurer under section 447 or 457 of this chapter shall be deemed to be prima facie correct. The amount of such assessment to be paid by each member as determined by the insurer shall be deemed to be likewise prima facie correct.

Enforcement
of contingent
liability.

(2) The insurer shall notify each member of the amount of the assessment to be paid by written notice mailed to the address of the member last of record with the insurer. Failure of the member to receive the notice

Notice.

so mailed, within the time specified therein for the payment of the assessment or at all, shall be no defense in any action to collect the assessment.

Suit on
failure to pay.

(3) If a member fails to pay the assessment within the period specified in the notice, which period shall not be less than twenty (20) days after mailing, the insurer may institute suit to collect the same.

Nonassessable
policies—
mutual insurers.

Section 449. Nonassessable policies, mutual insurers. (1) While possessing surplus funds in amount not less than the paid-in capital stock required of a domestic stock insurer transacting like kinds of insurance, a domestic mutual insurer may, upon receipt of the commissioner's order so authorizing, extinguish the contingent liability of its members as to all its policies in force and may omit provisions imposing contingent liability in all its policies currently issued.

Foreign or
alien insurer.

(2) A foreign or alien mutual insurer may issue non-assessable policies to its members in this state pursuant to its articles of incorporation and the laws of its domicile.

No assessment
for insurer's
debt or liability.

(3) No policy of a domestic mutual insurer which, pursuant to the commissioner's order, is without contingent liability and thereby nonassessable by its terms shall be subject to assessment for any debt or liability of the insurer.

Revocation
of authority
to issue
nonassessable
policies for cause.

Section 450. Nonassessable policies, revocation of authority. The commissioner shall revoke the authority of a domestic mutual insurer to issue policies without contingent liability if at any time the insurer's assets are less than the sum of its liabilities and the surplus required for such authority, or if the insurer, by resolution of its board of directors approved by a majority of its members, requests that the authority be revoked. During the absence of such authority the insurer shall not issue any policy without providing therein for the contingent liability of the policyholder, nor renew any policy which is renewable at the option of the insurer without endorsing the same to provide for such contingent liability.

Authority
to issue
participating
policies.

Section 451. Participating policies. (1) If provided in its articles of incorporation, a domestic stock or do-

mestic mutual insurer may issue any or all of its policies with or without participation in profits, savings or unabsorbed portions of premiums, may classify policies issued on a participating and non-participating basis, and may determine the right to participate and the extent of participation of any class or classes of policies. Any such classification or determination shall be reasonable, and shall not unfairly discriminate as between policyholders within the same such classifications. A life insurer may issue both participating and non-participating policies only if the right or absence of right to participate is reasonably related to the premium charged. Any such domestic insurer which, prior to the effective date of this code, has been issuing all or part of its policies on a participating basis without specific authorization in its articles of incorporation, may continue to issue such policies on a basis not inconsistent with this section.

(2) After the third policy year no dividend otherwise earned, shall be made contingent upon the payment of renewal premium on any policy.

Dividends not
contingent
after third year.

Section 452. Dividends to stockholders. (1) A domestic stock insurer shall not pay any cash dividend to stockholders except out of that part of its available surplus funds which is derived from realized net profits on its business.

Authorized
dividend funds—
stock insurers.

(2) A stock dividend may be paid out of any available surplus funds in excess of the aggregate amount of surplus loaned to the insurer under section 455.

(3) A dividend otherwise proper may be payable out of the insurer's earned surplus even though its total surplus is then less than the aggregate of its past contributed surplus resulting from issuance of its capital stock at a price in excess of the par value thereof.

Section 453. Dividends to mutual policyholders. (1) The directors of a domestic mutual insurer may from time to time apportion and pay or credit to its members dividends only out of that part of its surplus funds which represents net realized savings and net realized earnings in excess of the surplus required by law to be maintained.

Authorized
dividend funds—
mutual insurers.

(2) A dividend otherwise proper may be payable out of such savings and earnings even though the insurer's total surplus is then less than the aggregate of its contributed surplus.

Illegal dividends—
penalty.

Section 454. **Illegal dividends—Penalty.** (1) Any director of a domestic stock or mutual insurer who votes for or concurs in declaration or payment of a dividend to stockholders or members other than as authorized under sections 452 or 453 shall upon conviction thereof be guilty of a misdemeanor and shall be jointly and severally liable, together with other such directors likewise voting for or concurring, for any loss thereby sustained by the insurer.

Stockholder's
liability.

(2) Any stockholder receiving such an illegal dividend shall be liable in the amount thereof to the insurer.

Suspension,
revocation—
certificate
of authority.

(3) The commissioner may revoke or suspend the certificate of authority of an insurer which has declared or paid such an illegal dividend.

Authority
of insurer to
borrow money—
excess surplus.

Section 455. **Borrowed surplus.** (1) A domestic stock or mutual insurer may borrow money to defray the expenses of its organization, provide it with surplus funds, or for any purpose of its business, upon a written agreement that such money is required to be repaid only out of the insurer's surplus in excess of that stipulated in such agreement. The agreement may provide for interest not exceeding six percent (6%) per annum, which interest shall or shall not constitute a liability of the insurer as to its funds other than such excess of surplus, as stipulated in the agreement. No commission or promotion expense shall be paid in connection with any such loan.

Interest.

Borrowed money
not part of
liabilities
except as to
excess surplus.

(2) Money so borrowed, together with the interest thereon if so stipulated in the agreement, shall not form a part of the insurer's legal liabilities except as to its surplus in excess of the amount thereof stipulated in the agreement, or be the basis of any setoff; but until repaid, financial statements filed or published by the insurer shall show as a footnote thereto the amount thereof then unpaid together with any interest thereon accrued but unpaid.

Loan approval
by commissioner.

(3) Any such loan to a mutual insurer shall be sub-

ject to the commissioner's approval. The insurer shall, in advance of the loan, file with the commissioner a statement of the purpose of the loan and a copy of the proposed loan agreement. The loan and agreement shall be deemed approved unless within fifteen days after date of such filing the insurer is notified of the commissioner's disapproval and the reasons therefor. The commissioner shall disapprove any proposed loan or agreement if he finds the loan is unnecessary or excessive for the purpose intended, or that the terms of the loan agreement are not fair and equitable to the parties, and to other similar lenders, if any, to the insurer, or that the information so filed by the insurer is inadequate.

(4) Any such loan to a mutual insurer or substantial portion thereof shall be repaid by the insurer when no longer reasonably necessary for the purpose originally intended. No repayment of such loan shall be made by a mutual insurer unless in advance approved by the commissioner.

Repayment.

(5) This section shall not apply to loans obtained by the insurer in ordinary course of business from banks and other financial institutions, nor to loans secured by pledge or mortgage of assets.

Exempt loans.

Section 456. **Impairment of capital or assets.** (1) If a stock insurer's capital (as represented by the aggregate par value of its outstanding capital stock) becomes impaired, or the assets of a mutual insurer are less than its liabilities and the minimum amount of surplus required to be maintained by it under sections 425 or 430 for authority to transact the kinds of insurance being transacted, the commissioner shall at once determine the amount of deficiency and serve notice upon the insurer to make good the deficiency within sixty days after service of such notice.

Impairment of
capital or assets.

Notice to make
good deficiency.

(2) The deficiency may be made good in cash or in assets eligible under chapter 6 (investments) for the investment of the insurer's funds; or if a stock insurer, by reduction of the insurer's capital to an amount not below the minimum required for the kinds of insurance thereafter to be transacted; or if a mutual insurer, by amendment of its certificate of authority to cover only

Methods
available.

such kind or kinds of insurance thereafter for which the insurer has sufficient surplus under this code.

Delinquency proceedings on failure to make good deficiency.

(3) If the deficiency is not made good and proof thereof filed with the commissioner within such sixty-day period, the insurer shall be deemed insolvent and the commissioner shall institute delinquency proceedings against it under chapter 26 of this code; except that if such deficiency exists because of increased loss reserves required by the commissioner, or because of disallowance by the commissioner of certain assets or reduction of the value at which carried in the insurer's accounts, the commissioner may, in his discretion and upon application and good cause shown, extend for not more than an additional sixty days the period within which such deficiency may be so made good and such proof thereof so filed.

Assessment of stockholders or members to cure deficiency.

Section 457. **Assessment of stockholders or members.** Any insurer receiving the commissioner's notice mentioned in section 456 (1):

(1) If a stock insurer, by resolution of its board of directors and subject to any limitations upon assessment contained in its articles of incorporation, may assess its stockholders for amounts necessary to cure the deficiency and provide the insurer with a reasonable amount of surplus in addition. If any stockholder fails to pay a lawful assessment after notice given to him in person or by advertisement in such time and manner as approved by the commissioner, the insurer may require the return of the original certificate of stock held by the stockholder, and in cancellation and in lieu thereof issue a new certificate for such number of shares as the stockholder may then be entitled to, upon the basis of the stockholder's proportionate interest in the amount of the insurer's capital stock as determined by the commissioner to be remaining at the time of determination of amount of impairment under section 456, after deducting from such proportionate interest the amount of such unpaid assessment. The insurer may pay for or reissue fractional shares under this subsection.

Exchange of stock certificates on failure to pay.

Assessment—mutual insurer.

(2) If a mutual insurer, shall levy such an assessment upon members as is provided for under section 447.

(3) Neither this section nor section 456 shall be deemed to prohibit the insurer from curing any such deficiency through any lawful means other than those referred to in such sections.

Other lawful means permitted.

Section 458. **Directors' liability for losses during deficiency.** The directors of the insurer shall be individually liable as to losses incurred under policies issued by the insurer after expiration of the period provided in section 456 for curing any deficiency of the insurer's capital stock or surplus and prior to the curing of the deficiency.

Directors' liability for losses incurred during deficiency.

Section 459. **Stock transfer during impairment of capital.** Any transfer of the stock of a domestic insurer made during the existence of any impairment of such insurer's capital does not release the stockholder making the transfer from any liability as a stockholder of such insurer which accrued prior to such transfer.

Stock transfer does not release accrued liability.

Section 460. **Mutualization of stock insurers.** (1) A stock insurer other than a title insurer may become a mutual insurer under such plan and procedure as may be approved by the commissioner after a hearing thereon.

Stock insurer may become mutual—approved plan.

(2) The commissioner shall not approve any such plan, procedure or mutualization unless:

Disapproval for cause.

(a) It is equitable to stockholders and policyholders;

Must be equitable.

(b) It is subject to approval by the holders of not less than three-fourths of the insurer's outstanding capital stock having voting rights and by not less than two-thirds of the insurer's policyholders who vote on such plan in person, by proxy or by mail pursuant to such notice and procedure as may be approved by the commissioner;

Approval by voting stockholders.

(c) If a life insurer, the right to vote thereon is limited to holders of policies other than term or group policies, and whose policies have been in force for more than one year;

Limited voting rights—life insurer.

(d) Mutualization will result in retirement of shares of the insurer's capital stock at a price not in excess of the fair market value thereof as determined by competent disinterested appraisers;

Effect on stock shares.

Purchase
of shares—
nonconsenting
stockholder.

(e) The plan provides for the purchase of the shares of any nonconsenting stockholder in the same manner and subject to the same applicable conditions as provided by sec. 15-1905 Replacement Vol. 2, Revised Codes of Montana, 1947, as to rights of nonconsenting stockholders, with respect to consolidation or merger of private corporations;

Effective date.

(f) The plan provides for definite conditions to be fulfilled by a designated early date upon which such mutualization will be deemed effective; and

Adequate surplus.

(g) The mutualization leaves the insurer with surplus funds reasonably adequate for the security of its policyholders and to enable it to continue successfully in business in the states in which it is then authorized to transact insurance, and for the kinds of insurance included in its certificates of authority in such states.

Exception.

(3) This section shall not apply to mutualization under order of court pursuant to rehabilitation or reorganization of an insurer under chapter 26.

Mutual insurer
may become
stock insurer—
approved plan.

Section 461. **Converting mutual insurer.** (1) A mutual insurer may become a stock insurer under such plan and procedure as may be approved by the commissioner after a hearing thereon.

Disapproval
for cause.

(2) The commissioner shall not approve any such plan or procedure unless:

Must be
equitable.

(a) It is equitable to the insurer's members;

Approval by
voting members.

(b) It is subject to approval by vote of not less than three-fourths of the insurer's current members voting thereon in person, by proxy, or by mail at a meeting of members called for the purpose pursuant to such reasonable notice and procedure as may be approved by the commissioner; if a life insurer, right to vote may be limited to members who hold policies other than term or group policies, and whose policies have been in force for not less than one year;

Policyholders
equity—
fair formula.

(c) The equity of each policyholder in the insurer is determinable under a fair formula approved by the commissioner, which such equity shall be based upon not less than the insurer's entire surplus (after deducting contributed or borrowed surplus funds) plus a reason-

able present equity in its reserves and in all non-admitted assets;

(d) The policyholders entitled to participate in the purchase of stock or distribution of assets shall include all current policyholders and all existing persons who had been a policyholder of the insurer within three years prior to the date such plan was submitted to the commissioner;

Policyholders
entitled to
participate.

(e) The plan gives to each policyholder of the insurer as specified in subdivision (d) above, a preemptive right to acquire his proportionate part of all of the proposed capital stock of the insurer, within a designated reasonable period, and to apply upon the purchase thereof the amount of his equity in the insurer as determined under subdivision (c) above;

Policyholders'
preemptive right.

(g) Shares are so offered to policyholders at a price not greater than to be thereafter offered to others, but at not more than double the par value of such shares;

Price of shares.

(h) The plan provides for payment to each policyholder not electing to apply his equity in the insurer for or upon the purchase price of stock to which preemptively entitled, of cash in the amount of not less than fifty percent (50%) of the amount of his equity not so used for the purchase of stock, and which cash payment together with stock so purchased, if any, shall constitute full payment and discharge of the policyholder's equity as an owner of such mutual insurer; and

Payment—
nonconsenting
policyholder.

(i) The plan, when completed, would provide for the converted insurer paid-in capital stock in an amount not less than the minimum paid-in capital required of a domestic stock insurer transacting like kinds of insurance, together with surplus funds in amount not less than one-half of such required capital.

Required paid-in
capital stock.

Section 462. **Mergers and consolidations of stock insurers.** (1) A domestic stock insurer may merge or consolidate with one or more domestic or foreign stock insurers authorized to transact insurance in this state, by complying with the applicable provisions of the statutes of this governing the merger or consolidation of stock corporations formed for profit, but subject to subsections (2) and (3) below.

Mergers and
consolidation—
stock insurers.

Approval by
commissioner.Disapproval
for cause.

(2) No such merger or consolidation shall be effectuated unless in advance thereof the plan and agreement therefor have been filed with the commissioner and approved in writing by him after a hearing thereon. The commissioner shall give such approval within a reasonable time after such filing unless he finds such plan or agreement:

(a) Is contrary to law; or

(b) Inequitable to the stockholders of any domestic insurer involved; or

(c) Would substantially reduce the security of and service to be rendered to policyholders of the domestic insurer in this state or elsewhere.

(3) No director, officer, agent or employee of any insurer party to such merger or consolidation shall receive any fee, commission, compensation or other valuable consideration whatsoever for in any manner aiding, promoting or assisting therein except as set forth in such plan or agreement.

Written notice
of disapproval.

(4) If the commissioner does not approve any such plan or agreement he shall so notify the insurer in writing specifying his reasons therefor.

Hearing—
participation by
insurance officials
other jurisdictions.

(5) If any domestic insurer involved in the proposed merger or consolidation is authorized to transact insurance also in other states, the commissioner may request the insurance commissioner, director of insurance, superintendent of insurance or other similar public insurance supervisory official of the two other such states in which such insurer has in force the larger amounts of insurance, to participate in the hearing provided for under subsection (2) above, with full right to examine all witnesses and evidence and to offer to the commissioner such pertinent information and suggestions as they may deem proper.

Controlling
stock—
order of merger.

(6) Any plan or proposal through which a stock insurer proposes to acquire a controlling stock interest in another stock insurer through an exchange of stock of the first insurer, issued by the insurer for the purpose, for such controlling stock of the second insurer is deemed to be a plan or proposal of merger of the second insurer

into the first insurer for the purposes of this section and is subject to the applicable provisions hereof.

Section 463. **Mergers and consolidations, mutual insurers.** (1) A domestic mutual insurer shall not merge or consolidate with a stock insurer.

Mutual insurer
not to merge
with stock insurer.

(2) A domestic mutual insurer may merge or consolidate with another mutual insurer under the applicable procedures prescribed by the statutes of this state applying to corporations formed for profit, except as hereinbelow provided.

Mutual insurer
may merge
with another.

(3) The plan and agreement for merger or consolidation shall be submitted to and approved by at least two-thirds of the members of each mutual insurer involved voting thereon at meetings called for the purpose pursuant to such reasonable notice and procedure as has been approved by the commissioner. If a life insurer, right to vote may be limited to members whose policies are other than term and group policies, and have been in effect for more than one year.

Approval by
voting members.

(4) No such merger or consolidation shall be effectuated unless in advance thereof the plan and agreement therefor have been filed with the commissioner and approved by him in writing after a hearing thereon. The commissioner shall give such approval within a reasonable time after such filing unless he finds such plan or agreement:

Approval by
commissioner.Disapproval
for cause.

(a) Inequitable to the policyholders of any domestic insurer involved; or

(b) Would substantially reduce the security of and service to be rendered to policyholders of the domestic insurer in this state and elsewhere.

(5) If the commissioner does not approve such plan or agreement he shall so notify the insurers in writing specifying his reasons therefor.

(6) Section 462 (5) shall also apply as to mergers and consolidations of such mutual insurers.

Section 464. **Bulk reinsurance, stock insurers.** (1) A domestic stock insurer may reinsure all or substantially all of its insurance in force or a major class thereof,

Reinsurance
agreements—
stock insurers.

Approval by
commissioner.

with another insurer by an agreement of bulk reinsurance; but no such agreement shall become effective unless filed with the commissioner and approved by him in writing after a hearing thereon.

Disapproval
for cause.

(2) The commissioner shall approve such agreement within a reasonable time after such filing unless he finds that it is inequitable to the stockholders of the domestic insurer or would substantially reduce the protection or service to its policyholders. If the commissioner does not approve the agreement he shall so notify the insurer in writing specifying his reasons therefor.

Reinsurance
agreements—
Mutual insurers.

Section 465. **Bulk reinsurance, mutual insurers.** (1) A domestic mutual insurer may reinsure all or substantially all its business in force, or all or substantially all of a major class thereof, with another insurer, stock or mutual, by an agreement of bulk reinsurance after compliance with this section. No such agreement shall become effective unless filed with the commissioner and approved by him in writing after a hearing thereon.

Approval by
commissioner.Disapproval
for cause.

(2) The commissioner shall approve such agreement within a reasonable time after filing if he finds it to be fair and equitable to each domestic insurer involved, and that such reinsurance if effectuated would not substantially reduce the protection or service to its policyholders. If the commissioner does not so approve, he shall so notify each insurer involved in writing specifying his reasons therefor.

Approval by
voting members.

(3) The plan and agreement for such reinsurance must be approved by vote of not less than two-thirds of each domestic mutual insurer's members voting thereon at meetings of members called for the purpose, pursuant to such reasonable notice and procedure as the commissioner may approve. If a life insurer, right to vote may be limited to members whose policies are other than term or group policies, and have been in effect for more than one year.

Reinsurance in
stock insurer—
conditions.

(4) If for reinsurance of a mutual insurer in a stock insurer, the agreement must provide for payment in cash to each member of the insurer entitled thereto as upon conversion of such insurer pursuant to section 461, of his equity in the business reinsured as determined under

a fair formula approved by the commissioner, which equity shall be based upon such member's equity in the reserves, assets (whether or not "admitted" assets), and surplus, if any, of the mutual insurer to be taken over by the stock insurer.

Section 466. **Mutual member's share of assets on liquidation.**

(1) Upon any liquidation of a domestic mutual insurer, its assets remaining after discharge of its indebtedness, policy obligations, repayment of contributed or borrowed surplus, if any, and expenses of administration, shall be distributed to existing persons who were its members at any time within thirty-six months next preceding the date such liquidation was authorized or ordered, or date of last termination of the insurer's certificate of authority, whichever date is the earlier.

Distribution
of assets on
liquidation.

(2) The distributive share of each such member shall be in the proportion that the aggregate premiums earned by the insurer on the policies of the member during the combined periods of his membership bear to the aggregate of all premiums so earned on the policies of all such members. The insurer may, and if a life insurer shall, make a reasonable classification of its policies so held by such members, and a formula based upon such classification, for determining the equitable distributive share of each such member. Such classification and formula shall be subject to the approval of the commissioner.

Proportionate
distributive
share of members.

Section 467. **Extinguishment of unused corporate charters.** (1) The corporate charter of any corporation formed under the laws of this state more than three years prior to the effective date of this code for the purpose of becoming an insurer, and which corporation within such three-year period has not actively engaged in business as a domestic insurer under a certificate of authority issued to it by the commissioner under laws then in force, is hereby extinguished and nullified.

Extinguishment
of unused
corporate
charters—
insurance
corporations.

(2) The corporate charter of any other corporation formed under the laws of this state for the purpose of becoming an insurer, and which corporation during any period of thirty-six consecutive months after the effective date of this code is not actively engaged in business as

Other
corporations.

a domestic insurer under a certificate of authority issued to it by the commissioner under law currently in force, is automatically hereby extinguished and nullified at the expiration of such 36-month period.

(3) The period during which any such corporation referred to in subsection (2) above is the subject of delinquency proceedings under chapter 26 of this code shall not be counted as part of any such 36-month period.

Merged
corporations.

(4) Upon merger or consolidation of a domestic insurer with another insurer under this chapter, the corporate charter of such merged or consolidated domestic insurer shall thereby automatically be extinguished and nullified.

Farm mutual
insurers—
scope—
definition.

CHAPTER 23 — FARM MUTUAL INSURERS

Section 468. **Scope of chapter; provisions exclusive.**
(1) This chapter applies to:

(a) All domestic mutual hail, fire and other casualty insurers of farm property and stock and rural buildings heretofore formed and immediately prior to the effective date of this code lawfully transacting insurance under sections 40-1501 through 40-1517 (and all amendments thereto) of the Revised Codes of Montana, 1947.

(b) All domestic mutual rural insurers heretofore formed and immediately prior to the effective date of this code lawfully transacting insurance under sections 40-1601 through 40-1625 (and all amendments thereto) of the Revised Codes of Montana, 1947.

(c) All insurers hereafter formed under this chapter.

(2) All such insurers may be referred to as "farm mutual insurers."

(3) Nothing in the insurance laws of this state shall be deemed to apply to or govern either directly or indirectly domestic farm mutual insurers except as contained or referred to in this chapter.

"County"
and "state"
insurers defined.

Section 469. **"County" and "state" insurers defined.**

(1) An insurer authorized to insure property throughout the state is a "state" mutual insurer.

(2) An insurer authorized to insure only property

located in the county wherein is located its principal office and in the counties in this state with boundaries contiguous with such principal office county is a "county" mutual insurer.

Section 470. **Insuring powers, in general.** (1) A farm mutual insurer shall insure against loss or damage by fire or other casualty only:

Insuring powers.

(a) Farm dwellings and buildings, including the usual contents therein, farm livestock, machinery, vehicles, growing crops and other forms of farm property owned by a member of such insurer or by his spouse.

(b) Dwellings designed for occupancy by not over two families, together with the usual contents thereof, situated in an incorporated city or town if such property is owned by a member of the insurer or by his spouse, and if such member has other insurance of farm property with the insurer for a substantial amount.

(c) Rural schoolhouses and buildings used in connection therewith, rural community houses or rural churches, or other rural public buildings.

(2) Except as provided in subsection (1) (c) above, an insurer shall not insure any property not owned by a member or by his spouse.

(3) An insurer shall not insure any property situated within the limits of incorporated towns or cities except as provided in subsection (1) (b) above; and shall not so insure unless it has and maintains the surplus funds as required under section 482 of this chapter.

Section 471. **Limit of risk.** (1) The maximum amount of insurance which an insurer shall retain on a single risk, after deduction of applicable reinsurance, shall not exceed ten percent (10%) of the admitted assets of the insurer or five thousand dollars, whichever is the larger amount.

Limit of risk.

(2) For the purposes of this section, a "single risk" as to insurance against fire and hazards other than windstorm, earthquake, or other catastrophic perils, includes all properties insured by the same insurer which are reasonably susceptible to loss or damage from the

"Single risk"
defined.

same fire or the same occurrence of such other hazard insured against.

Reinsurance.

Section 472. **Reinsurance.** A farm mutual insurer may cede reinsurance to any other farm mutual insurer or insurers, and to other authorized property insurers, and may accept reinsurance from other farm mutual insurers.

Cash premium or assessment plan.

Section 473. **Cash premium or assessment plans.** (1) An insurer may transact business either on the cash premium plan altogether, or on the assessment plan altogether, whichever plan is provided for in its articles of incorporation or bylaws.

Collection under cash premium plan.

(2) If transacting business on the cash premium plan, the insurer shall collect from each member before or at the time of effectuation of the member's insurance the premium in cash in such amount as the insurer deems will be adequate to cover losses and expenses incurred during the term of such insurance.

Collection under assessment plan.

(3) If transacting business on the assessment plan, the insurer will depend for the payment of losses and expenses principally upon assessments from time to time levied upon members either before or after such losses or expenses have been incurred. This provision shall not be construed, however, as preventing any such insurer from collecting from each member such initial amount as it may deem proper prior to or at the time of the effectuation of the member's insurance; nor shall it be deemed to prohibit the acquisition, accumulation and maintenance of surplus or unallocated funds.

Special assessments under cash premium plan.

(4) An insurer transacting business on the cash premium plan may nevertheless provide in its bylaws and policies for special assessment of its members in event the cash premium charged is found by it to be inadequate to pay in full losses and expenses currently incurred. The bylaws shall provide a specific limitation as to the amount which can be so assessed in any one policy year, such amount to be not less than one (1) nor more than six (6) times the premium charged on each member's policy at the annual rate for a term of one (1) year.

Number of incorporators—farm mutual insurer.

Section 474. **Who may form a farm mutual insurer.** (1) One hundred (100) or more individuals residing in

this state, each of whom is twenty-one (21) years of age or more, who collectively own farm property as referred to in section 470 (1) (a) of this chapter valued at not less than five hundred thousand dollars (\$500,000) which they desire to insure, and each of whom owns farm lands or ranch lands situated in this state valued at not less than five thousand dollars (\$5,000), may incorporate a state mutual insurer.

(2) Twenty-five (25) or more individuals residing in this state, each of whom is twenty-one (21) years or more of age, each of whom owns farm land or ranch land valued at five thousand dollars (\$5,000) or more in the county wherein is to be located the principal office of the proposed insurer, or in any county in this state contiguous with such county, and who collectively own in such counties farm property referred to in section 470 (1) (a) of this chapter valued at not less than one hundred twenty-five thousand dollars (\$125,000) which they desire to insure, may incorporate a county mutual insurer.

Number of incorporators—county mutual insurer.

Section 475. **Declaration of intention to incorporate—articles of incorporation.** (1) The individuals proposing to form a farm mutual insurer as referred to in section 474 shall file with the Commissioner:

Procedure—forming farm mutual.

(a) A declaration of their intention to form such a corporation, which declaration shall be signed by at least one hundred (100) incorporators if a proposed state mutual insurer, or by at least twenty-five (25) incorporators if a proposed county mutual insurer; and

Declaration of intention.

(b) Proposed articles of incorporation executed in quadruplicate by three (3) or more of the incorporators and acknowledged by each before a person authorized to take and verify acknowledgments of conveyance of real property.

Proposed articles of incorporation.

(2) The articles of incorporation shall state:

Required provisions—name of corporation.

(a) The name of the corporation; if a state mutual insurer, the words "farm mutual" must be a part of the name; if a county mutual insurer, the name shall contain the words "farm mutual", or "rural mutual" together with the name of the county wherein is to be located its principal place of business. The name shall not be so

Principal place of business.

similar to one already used by a corporation in this state as to be misleading.

Counties—
county mutual.

(b) If a county mutual insurer, the name of the county or counties in which the corporation is to transact insurance and the address where its principal business office will be located.

Place of
business—
state mutual.

(c) If a state mutual insurer, the location of its principal business office, which office must be located in this state.

Purpose.

(d) The objects and purposes for which the corporation is formed.

Plan.

(e) Whether it intends to transact business on the cash premium plan or the assessment plan.

Duration.

(f) The duration of its existence, which may be perpetual.

Directors—
number and
names.

(g) The number of its directors, which shall not be less than five (5) nor more than (11); also the names and addresses of the members of the initial board of directors appointed to manage the affairs of the corporation until the first annual meeting of the members, and until their successors are elected and qualified.

Other legal
provisions.

(h) Such other provisions, not inconsistent with law, deemed appropriate by the incorporators.

Incorporators—
names, addresses,
value of property.

(i) The names, residences and addresses of the incorporators, and the value of the property desired insured owned by each in the county or counties where the operations of the corporation are to be carried on.

Filing fee.

(3) At the time of filing of the articles of incorporation as provided in subsection (1) above, the incorporators shall pay to the Commissioner a filing fee of ten dollars (\$10). The Commissioner shall deposit all such fees with the State Treasurer to the credit of the general fund of this state.

Approval by
attorney general.

Section 476. **Articles of incorporation; approval; commencement of corporate existence.** (1) Upon receipt thereof, the Commissioner shall forward the proposed articles of incorporation to the Attorney General for examination. If the Attorney General finds the articles to be in accordance with the provisions of this

chapter, and not in conflict with the constitution and laws of the United States of America or of this state, he shall make a certificate of the facts and return it with the proposed articles to the Commissioner.

(2) If the Commissioner deems the name of the proposed corporation to be so similar to one already appropriated by another company or corporation as to be likely to mislead the public, he shall reject the name applied for and shall notify the incorporators thereof.

Notice of
name rejection.

(3) When the proposed articles of incorporation have been approved by the Attorney General, the Commissioner shall likewise endorse his approval upon each set of the articles, file one set in his office and forward the other three sets of articles to the incorporators. The incorporators shall file one of such sets of articles with the Secretary of State, one set with the Commissioner bearing the certification of the Secretary of State, and one set with the county clerk of the county wherein is located the principal place of business of the corporation, and shall pay to the Secretary of State and the county clerk the customary filing fees. The remaining set of articles shall be made a part of the corporation's records.

Approval by
commissioner.

(4) The corporation shall have legal existence as such upon the approval of the articles by the Attorney General and the Commissioner and completion of the filings referred to in subsection (3) above, but it shall not transact business as an insurer until it has fulfilled the requirements for and has obtained a certificate of authority as provided in section 483 of this chapter.

Certificate
of authority
required to
transact
insurance
business.

Section 477. **Amendment of articles of incorporation.** A farm mutual insurer may, by a vote of two-thirds (2/3) of its members present at any annual meeting, or at any special meeting of members called for that purpose, amend its articles of incorporation to extend its corporate duration or in any particular within the scope of this chapter, by causing amended articles to be filed in the same form and manner as required for original articles of incorporation. The amended articles of incorporation shall be signed only by the president and secretary of the corporation, and attested by the corporate seal. Notice of the proposed amendment shall be

Amendment—
two-thirds vote
of members.

contained in the notice given of any such annual or special meeting.

Copies as
evidence.

Section 478. **Certified copies of articles as evidence.** A copy of the articles of incorporation of a farm mutual insurer, and any amendments thereof, filed pursuant to law and certified by the Commissioner, shall be received in all courts and other places as prima facie evidence of the facts therein stated and of the due incorporation of the insurer.

Corporate
powers.

Section 479. **Corporate powers — In general.** (1) An insurance corporation formed under this chapter, or existing on the effective date of this code, and of a type which might be formed under this chapter shall have the same capacity to act possessed by individuals, but with authority to perform only such lawful acts as are necessary or proper to accomplish its purposes.

(2) Without affecting the authority contained in subsection (1) above, every such corporation shall have the following corporate powers:

To have
succession.

(a) To have succession by its corporate name for the period stated in its articles.

To sue.

(b) To sue and be sued in its corporate name.

Seal.

(c) To adopt, use and alter a corporate seal.

Property.

(d) To acquire, hold, sell, use, dispose of, pledge or mortgage any such property as its purpose may require, subject to any limitation prescribed by law or the articles of incorporation.

Insurance.

(e) To transact insurance.

Authorized
representatives.

(f) To conduct its affairs through its directors, officers, employees, agents and representatives thereunto duly authorized.

By laws.

(g) To make bylaws not inconsistent with law for the exercise of its corporate powers, the management, regulation and government of its affairs and property, including (but not limited to) calling and holding of meetings of its directors or members, and to modify or amend such bylaws.

Necessary
powers.

(h) To exercise, subject to law and the express pro-

visions of the articles of incorporation, all such incidental and subsidiary powers as may be necessary or convenient to the attainment of the objectives set forth in such articles.

(i) To dissolve and wind up, or be dissolved and wound up, in the manner provided by law.

Dissolution.

Section 480. **Initial qualifications.** When applying for an original certificate of authority as an insurer newly organized in this state, the insurer must have surplus as required by section 482 of this chapter, be otherwise qualified therefor under this code, and:

Qualifications.

(1) If a county mutual insurer, it must have received acceptable bona fide written applications from twenty-five (25) separate persons for substantial insurance of the kinds of insurance proposed to be transacted, aggregating at least one hundred thousand dollars (\$100,000); and such applicants must have given to the insurer the obligations referred to in section 510 of this chapter, or paid the premium required therefor, subject to the insurer qualifying to transact the kinds of insurance so applied for.

County mutual—
applications—
amount.

(2) If a state mutual insurer, it must have received acceptable bona fide written applications from one hundred (100) separate persons, each for substantial insurance, aggregating at least five hundred thousand dollars (\$500,000) of the kinds of insurance proposed to be transacted; and such applicants must have given to the insurer the obligations referred to in section 510 of this chapter, or paid the premium required therefor, subject to the insurer qualifying to transact the kinds of insurance so applied for.

State mutual—
applications—
amount.

(3) If to insure growing crops against loss or damage by hail, it must have received applications for such hail insurance from not less than one hundred (100) persons resident in Montana owning in the aggregate not less than five thousand (5,000) acres of grain; and each such applicant must have given to the insurer the obligations referred to in section 510 of this chapter, or paid the premium required therefor, subject to the insurer qualifying to transact insurance.

Crop hail
insurers—
amount.

Section 481. **Surplus defined.** "Surplus" is the ex-

"Surplus" defined.

tent to which the value of an insurer's assets exceeds its liabilities.

Surplus funds
required.

Section 482. **Surplus funds required.** A domestic farm mutual insurer may hereafter be authorized to transact insurance if otherwise in compliance with the applicable provisions of this chapter, if it has and thereafter maintains surplus funds as follows:

(1) If a state mutual insurer, surplus of not less than one hundred thousand dollars (\$100,000);

(2) If a county mutual insurer, surplus of not less than twenty thousand dollars (\$20,000); or

(3) If to insure growing crops against hail or other hazards, surplus in the amount of one hundred and fifty percent (150%) of the amount otherwise required under this section. This provision (3) shall not apply as to any domestic insurer first authorized as such prior to January 1, 1956, which transacts business on the pro rata, nonassessable plan, under which plan a pro rata portion only of insured losses is paid in event advance premiums collected are inadequate to pay all such losses in full.

Section 483. **Certificate of authority required; issuance; renewal.**

Certificate
of authority
required.

(1) No farm mutual insurer shall insure any risk in this state unless it then holds a subsisting certificate of authority issued to it by the commissioner.

Issuance.

(2) Upon application therefor the commissioner shall issue such a certificate of authority to every insurer qualified therefor under this chapter.

Expiration.

Renewal.

(3) Every such certificate of authority shall expire at midnight on the April 30 next following its date of issuance, unless theretofore revoked for cause or otherwise terminated. Unless he finds that the insurer is not qualified therefor under this chapter, the commissioner shall issue to the insurer a renewal certificate of authority on or before May 1 of each year. The commissioner shall not issue any such renewal certificate of authority to any insurer which has not filed its annual statement and report of expenditures as required under section 499 of this chapter.

(4) For each issuance and each renewal of its certificate of authority, the insurer shall pay to the commissioner a fee of five dollars (\$5), if a county mutual insurer, or twenty dollars (\$20), if a state mutual insurer, to be deposited by the commissioner with the state treasurer to the credit of the general fund of this state.

Fees—issuance
and renewal.

(5) A certificate of authority shall be subject to suspension or revocation by the commissioner for violation of or noncompliance with any provision of this chapter or referred to herein.

Suspension,
revocation
for cause.

Section 484. **Bylaws; adoption, power to amend.** Upon commencement of the legal existence of an insurer, its initial board of directors shall adopt such original bylaws, not inconsistent with the state constitution or this chapter, as may be deemed necessary for the management of its affairs. The bylaws shall be subject to the approval of the insurer's members at their next succeeding meeting. The members shall otherwise have the power to make, modify and revoke bylaws.

Adoption of
by laws.

Approval
by members.

Section 485. **Bylaws — Contents.** (1) The bylaws of a farm mutual insurer shall provide:

Required
provisions.

(a) As to the liability of each member for payment of the expenses and losses of the insurer, and what obligations shall be given therefor when a person applies for insurance.

Liabilities
of member.

(b) As to the time when obligations of members for losses and expenses become due.

When due.

(c) For limitation of liability of members for the payment of expenses and losses of the insurer.

Limitation
of liability.

(d) The terms of office of the directors; at least part of the directors shall be elected at each annual meeting of members, and the term of any director shall not be longer than three (3) years.

Directors—
term.

(e) The date of the annual meeting of the members, at which vacancies existing or occurring on the board of directors are to be filled by election by the members. Each member shall be permitted to cast at least one vote, either in person or, if so authorized in the bylaws, by proxy, for each director to be elected, and may cumulate

Date of
annual meeting.

his votes for one or more directors, not exceeding the number to be elected.

Directors—
election.

(f) How directors are to be elected in case no election occurs at the annual meeting, or in event of resignation, disability or death of a director.

Notice of
meetings.

(g) The manner and time of giving notice of annual and special meetings of members.

Permissive
provisions.

(2) The bylaws may provide:

(a) The character of property to be insured, and under what restrictions and limitations.

(b) Restrictions and limitations as to membership and the powers, duties and obligations of the members other than as to obligations covered under subsection (1) (a) above.

(c) The manner of making and collecting assessments.

(d) The manner of the suspension and expulsion of members.

(e) The form of application and the form of policy.

(f) The manner of making proof, adjustment and payment of losses.

(g) As to who is authorized to adjust losses for the insurer.

(h) For arbitration as provided in section 515 of this chapter, in event of the insurer's adjuster and any claimant cannot agree as to the amount of any insured damage or loss.

(i) The duties and compensation of the officers, and the bonds to be required of them.

(j) The books and records to be kept by the insurer, reports required of the officers and the manner of examining and auditing their accounts.

(k) What shall be contained on the corporate seal, and when the seal shall be required to be used.

(l) Such other matters as may be deemed necessary

or convenient for the management of the affairs of the insurer.

Section 486. **Bylaws binding upon members.** The bylaws of a farm mutual insurer are binding upon all of its members, and as from time to time amended are a part of the contracts of insurance between the insurer and its members.

By laws binding
upon members.

Section 487. **Members — Minimum membership.** (1) No person may become a member of a farm mutual insurer except by insuring therein property owned by him so insurable under this chapter.

Qualifications—
membership.

(2) The membership of such an insurer shall consist of the persons lawfully insuring therein.

(3) The total membership of the insurer shall at all times be not less than the number of persons required by section 474 of this chapter to incorporate such an insurer.

Section 488. **Annual meetings of members — Where held.** Annual meetings of the members of a farm mutual insurer may be held at its principal business office or at any other place located in any county in this state in which the insurer is authorized to transact insurance.

Place of
annual meetings.

Section 489. **Annual meeting, presentation of annual statement.** The annual statement of the insurer as required to be filed with the commissioner under section 499 of this chapter shall be presented at the annual meeting of the members of the insurer next following the end of the calendar year to which such statement relates.

Presentation
of annual
statement.

Section 490. **Adjourned annual meetings — Notice.** Notice of any adjourned annual meeting of members shall be given to the members of an insurer in the same manner as provided in the insurer's bylaws for the regular annual meeting of members.

Notice of
adjourned
annual meetings.

Section 491. **Members voting rights.** Each member of an insurer is entitled to one vote upon each matter coming to a vote at meetings of members of the insurer. A member may vote by written proxy if and as may be provided in the insurer's bylaws. No such proxy shall be made irrevocable or for longer than one year.

Members'
voting rights.

Limitation of members' liability.

Section 492. **Members' liability, limitation.** All liability of the members of a farm mutual insurer shall be as limited in the insurer's bylaws. As to insurers transacting business on the cash premium plan, the limitation shall comply with section 473 (4) of this chapter. No member shall be required to pay more than the full amount of his obligation given to the insurer, or of his liability as provided for in the bylaws.

Withdrawal of member.

Section 493. **Withdrawal of member — Cancellation by insurer.**

Surrender of policy for cancellation.

(1) Any member of an insurer may withdraw therefrom by surrendering his policy to the insurer for cancellation and paying all obligations then owing by him to the insurer.

Cancellation by insurer for cause—10 days' notice.

(2) The insurer has power to cancel the policy of any member for any cause deemed adequate by the insurer and upon not less than ten (10) days written notice in advance of cancellation delivered to the member or mailed to his address last of record with the insurer.

Directors manage farm mutual.

Section 494. **Board of directors — Quorum.** (1) The general management of the affairs of a farm mutual insurer is vested in its board of directors.

Quorum.

(2) A majority of the directors shall constitute a quorum to do business at any lawful meeting of the board.

Election—term of office.

Section 495. **Directors; election, term.** (1) Directors of a farm mutual insurer shall be elected by its members by ballot for terms not to exceed three (3) years, and shall hold office until their respective successors are elected and have qualified.

Director must be member.

(2) No individual shall serve as a director unless a member of the insurer.

Election of officers.

Section 496. **Officers.** The board of directors of an insurer shall elect from their number a president and vice-president. The board shall also elect a secretary and treasurer or a secretary-treasurer, who may or may not be members of the insurer. Officers shall hold their offices for one (1) year, and until their successors are elected and qualified, unless earlier removed by the board of directors.

Bonds required.

Section 497. **Bonds of officers.** The treasurer and secretary of an insurer shall each give bonds to the insurer for the faithful performance of their duties, in such amount as is designated by the board of directors. Any such bond shall be one issued by an authorized corporate surety.

License not required—officers, agents, employees.

Section 498. **Officers, agents and employees not licensed.** No agent of an insurer shall be required to obtain a license or authority from any public official to transact business for such insurer, nor shall the insurer or any of its officers, agents or employees be required to pay any fee or license for the transaction of the business of the insurer, except as provided in this chapter.

Annual statement must be filed.

Section 499. **Annual statement — Report — Must be filed with commissioner.** (1) The president and secretary of every insurer, on or before the first day of March each year, shall prepare, affirm under oath, affix the corporate seal thereto and file with the commissioner, on forms as prescribed and furnished by him, an annual statement for the preceding calendar year showing the condition of such insurer as of December 31 of such year and exhibiting the following facts:

Required facts.

- (a) The names of the president and secretary.
- (b) The date of the annual meeting.
- (c) The amount of insurance in force.
- (d) The number of members.
- (e) The number of assessments made during the year.
- (f) The amount paid in losses during the year.
- (g) The amount of the losses claimed and not paid, with the reason for non-payment.
- (h) The number of members withdrawn, suspended and expelled during the year.
- (i) The number of new members admitted during the year.
- (j) The expenses during the year.
- (k) The amount of money on hand.
- (l) The amount and character of the insurer's assets.

(m) The amount of the insurer's liabilities, including any reserves required to be established under this chapter.

(n) Such other information concerning the insurer's affairs as the commissioner may reasonably require.

Annual report must be filed.

(2) A report of an insurer's expenditures for educational purposes, if any, for the preceding year must be filed with the commissioner at the same time and in conjunction with the annual report of such insurer, as required under section 503.

Copy filed with county clerk.

(3) A copy of such annual statement and report of expenditures for educational purposes shall be filed by each county mutual insurer with the county clerk and recorder of the county wherein is located its principal place of business.

No other report required.

Section 500. Annual statement—Exclusive report—Penalty for failure to file. (1) No report, statement or return of any nature shall be required of any farm mutual insurer other than those required by section 499 of this chapter.

Suspension, revocation—certificate of authority.

(2) The commissioner may suspend or revoke the certificate of authority of any insurer failing to file its annual statement as required.

Examination—power of commissioner.

Section 501. Examination by commissioner—Expense. (1) The commissioner has power, at any time, to investigate and examine the affairs and books of any insurer.

Limitation—amount of expense paid by insurer.

(2) The charges to be paid by the insurer to the commissioner and his examiners for investigation and examinations provided for in subsection (1) above shall not exceed one hundred dollars (\$100) in any one calendar year unless otherwise expressly authorized by the insurer.

Power of directors to invest funds—specified investments.

Section 502. Investments. (1) When so directed by a majority vote of its members present at a duly called and held meeting of members, the directors of a farm mutual insurer shall have power to invest the insurer's funds or any part thereof in any of the following:

(a) Bonds or other securities issued by the United States government or by any agency thereof.

(b) Bonds or other obligations the payment of the interest and principal of which is assumed or guaranteed by the United States government or any agency thereof.

(c) General obligation bonds or warrants of any state, county or city, when recommended by the commissioner and approved by the state examiner.

(d) Loans secured by a first mortgage on real estate situated in the State of Montana, but subject to the provisions of subsection (3), below.

(2) At the time of making any such investment the document evidencing the same must be stamped with the name of the insurer with the following notation printed or written thereon: "Negotiable only upon the order of the board of directors of.....(naming the insurer)."

Negotiability requirement.

(3) No real estate loan shall be for more than sixty percent (60%) of the appraised value of the real estate securing the loan, and the appraisal must have been made within thirty (30) days prior to the date of the loan. No such loan shall be for a term longer than ten (10) years. The foregoing provisions shall not be deemed to prevent the renewal or extension of loans already made, and shall not apply to real estate loans which are insured under the provisions of any act of the congress of the United States, nor to the making, extension or renewal of any loans which are made under subchapter II of the act of congress known as the "servicemen's readjustment act of 1944," or any amendment thereof or supplement thereto, as to any part of such loans; nor shall such provisions be deemed to prevent an insurer from taking another and immediately subsequent mortgage or deed of trust when it already holds a first mortgage or deed of trust on the same real estate, nor from accepting a second lien on real estate to secure the payment of a debt previously contracted in good faith; nor shall it prevent subsequent liens of any kind from being taken to secure the payment of a debt previously contracted in good faith when in the judgment of the insurer's board of directors such subsequent liens are necessary further to secure the payment of any debts and save the insurer from loss.

Limitations—real estate loans.

Authority
to spend for
educational
purposes.

Section 503. **Expenditure of funds for educational purposes.** An insurer may spend in any one year up to five percent (5%) of its net earnings of the preceding year for educational purposes. A complete and itemized report of such expenditures shall be filed by the insurer as part of its annual report required under section 499.

Authority
to create
safety funds.

Section 504. **Safety fund.** (1) Any domestic farm mutual insurer may create a "safety" fund, in addition to any surplus required under section 482 or reserve otherwise required, for the purpose of paying insured losses or lawful expenses or obligations of the insurer as they are incurred.

Amount limited.

(2) The safety fund shall not exceed in amount three percent (3%) of the total amount of insurance in force in the insurer.

Exclusive use.

(3) The safety fund shall not be used for any purpose except as specified in subsection (1) above.

Reserves
required—cash
premium plan.

Section 505. **Reserves—Cash premium plan.** Each insurer transacting business on the cash premium plan shall maintain the following reserves:

(1) A loss reserve, in amount reasonably adequate to pay in full all losses already incurred but currently unpaid. The amount subsequently paid on such losses shall be credited against this reserve.

(2) A reserve for unearned premiums, which reserve shall be computed at fifty percent (50%) of net premiums (gross premiums less premiums returned) charged and collected for unexpired policy periods that commenced during the calendar year covered by the financial statement, plus one hundred percent (100%) of such net premiums charged and collected in advance for policy periods that are to commence after such calendar year. Or in the alternative, the insurer may at its option compute its entire reserve for unearned premiums as the aggregate amount of the pro rata unearned premiums for each policy in force as at the end of the calendar year to be covered by the financial statement.

Profit or
dividends
prohibited.

Section 506. **Profits or dividends.** No insurer shall accumulate any profits as such or pay any dividends. This provision shall not be deemed to prohibit an insurer

from accumulating and maintaining surplus funds as required to be maintained by it under this chapter, or a "safety" fund as authorized under section 504, or from accumulating and maintaining other voluntary reserves for such purposes and in such amounts as may be reasonable. Limitations upon any such accumulations and the purposes thereof may be provided for in the insurer's by-laws.

Section 507. **Deficiency of surplus.** If the surplus funds of a farm mutual insurer at any time fall below the amount required to be maintained under this chapter, the insurer shall cure such deficiency within six (6) months thereafter, notwithstanding that new losses or expenses may be incurred within such six (6) months' period. If the deficiency is not so cured, the commissioner may, upon the insurer's written application therefor, allow an additional reasonable period, not to exceed six (6) months, for the curing of the deficiency. If the deficiency is not so cured within the first six (6) months' period (if additional time is not so applied for) or within such additional period as the commissioner may so allow, the commissioner shall forthwith suspend or revoke the insurer's certificate of authority.

Deficiency
of surplus—
duty to cure.

Suspension,
revocation on
failure to cure.

Section 508. **Records.** A farm mutual insurer, through its president and secretary, shall keep or cause to be kept accurate records and accounts of its transactions. The books, files and records of the insurer shall be located at its principal place of business or, in the case of a county mutual insurer, at such place within the county of its principal place of business as may be designated by the insurer's board of directors and shown in the minutes of the board. The books, files and records of the insurer shall be available for inspection by the insurer's directors and officers, and by the commissioner or his duly constituted examiner, at all reasonable times.

Records required.

Section 509. **Fees and taxes.** Except for the fees for filing articles of incorporation as provided in sections 475 and 476, for issuance and renewal of certificate of authority as provided in section 483, and for costs of examination by the commissioner as limited in section 501 (2), domestic farm mutual insurers shall not be subject to any other or additional fees or taxes of any kind,

Limited liability
for fees
and taxes—
farm mutual.

except for the usual ad valorem taxes upon real estate and tangible personal property of the insurer.

Applications
for insurance.

Section 510. **Application for insurance.** All persons desiring insurance shall make written application therefor to the insurer. If the insurer is transacting business on the assessment plan, the applicant shall at the time of application give his obligation to the insurer for the payment of losses and expenses as provided in the insurer's bylaws, and make such advance payment in cash as the insurer may require.

Obligation under
assessment plan.

Approval of forms
by commissioner
required.

Section 511. **Application and policy forms filed with commissioner.** All forms of application for insurance and of policies proposed to be used by an insurer shall be filed with the commissioner at least thirty (30) days in advance of any such use. The commissioner shall disapprove any such form found by him to be unlawful, illegible or misleading. An insurer shall not use any such form after it has received the commissioner's notice of disapproval setting forth the reasons therefor.

Farm mutual
rates need
not be filed.

Section 512. **Rates; filing, discrimination.** A farm mutual insurer is not required to file any of its insurance rates with the commissioner. No such rate shall be unfairly discriminatory as between subjects of insurance covered for like perils under like policies and having substantially the same insuring, exposure and underwriting characteristics.

Insurance
on schools,
community
houses,
churches—
not deemed
members.

Section 513. **Insurance of schools, community houses, churches.** (1) No contract of insurance effected upon the property of any school district, rural community house, rural church or rural public building pursuant to section 470 of this chapter shall be deemed to constitute such school district, or the owners of any such community house, church or public building, a member of the insurer.

Contract valid.

(2) No contract of insurance effected upon any rural school building, rural community house, rural church or other rural public building referred to in section 470 (1) (c) of this chapter shall be invalid because the directors or any director or officer of the insurer, at the time of effecting the insurance coverage was a trustee, director, agent, custodian or manager, or in any way in

control, supervision or management of any or all of the property so insured.

Section 514. **Losses — Notice — Adjustment.** (1) Every member of a domestic farm mutual insurer who has sustained any insured loss or damage shall immediately notify the insurer's secretary thereof and of the amount of damage or loss claimed.

Notice of loss.

(2) Upon receipt of the notice of loss referred to in subsection (1) above, the secretary shall notify the person or persons authorized by the bylaws of such insurer to ascertain the amount of the loss or damage and adjust the same.

Notice to
adjusters.

Section 515. **Arbitration — Committee — Compensation.** (1) If any insurer's adjuster and a claimant fail to agree as to the amount of the insured loss or damage sustained by the claimant, and if so provided for in the insurer's bylaws, the matter shall be submitted to three persons as a committee of reference, one of whom shall be selected by the claimant, one by the insurer and the third by such two persons, all of whom shall be sworn to a faithful and impartial investigation and award.

Arbitration
disputed loss.

Committee
of reference.

(2) The committee of reference shall have authority to examine witnesses and determine all matters in dispute. The decision or award of the committee shall be made in writing to the secretary of the insurer. If it relates to any claimed loss or damage to a crop, the decision or award shall not be made until after maturity of such crop. The decision or award of the committee shall be final and binding upon all parties, unless an interested party appeals to the court within thirty (30) days thereafter.

Authority
of committee.

Appeal.

(3) The compensation of each member of any such committee shall be at the rate of ten dollars (\$10) per day for each day of service in the discharge of his duties. Such compensation shall be paid by the claimant, unless the award of the committee exceeds the sum theretofore offered by the insurer in settlement of the claim and in which case the compensation shall be paid by the insurer.

Compensation
of committee
members.

Section 516. **Obligations or assessments due — Losses payable.** (1) Obligations or assessments of members for losses and expenses become due and payable at such time

Assessments—
time for
payment—
collection.

as may be provided in the bylaws of the insurer, and the insurer shall use due diligence to collect each obligation or assessment.

Time for
payment—
claims.

(2) Any valid claim for an insured loss against an insurer transacting business on the assessment plan shall not be payable by the insurer until thirty (30) days after such obligations of the members are due and payable.

Authority to
sue member.

Section 517. **Suit to collect obligations — Liability of directors or officers.** (1) An insurer may institute a suit against any member of such insurer if the member fails to pay when due any obligation or liability of the member given such insurer under the provisions of this chapter.

Individual
liability—
officers and
directors.

(2) The directors or officers of an insurer are liable in their individual capacity to the person sustaining an insured loss, if they wilfully refuse or neglect to perform the duties imposed upon them by the provisions of this section.

Proportionate
payment
of losses.

Section 518. **Proportionate payment of losses.** If the aggregate whole amount of the members' obligations to an insurer transacting business on the assessment plan are insufficient to pay all valid claims for losses under the insurer's contracts of insurance after necessary expenses in any one year, then such claimants insured by the insurer shall receive their proportionate share of the funds realized from such obligations in full satisfaction of such losses.

Insurer may be
sued by claimant.

Section 519. **Suit to collect for loss.** If the insurer fails to pay any insured loss when due, an action may be maintained against it to collect for such loss, but subject to section 518 as to assessment plan insurers.

Other
provisions
applicable
to farm
mutual insurers.

Section 520. **Other provisions applicable.** The following chapters and sections of this code also shall apply to farm mutual insurers to the extent so applicable and not inconsistent with the express provisions of this chapter and the reasonable implications of such express provisions:

- (1) Chapter 1 (scope of code).
- (2) Chapter 2 (the commissioner of insurance).

(3) The following sections of chapter 5 (assets and liabilities):

- (a) Section 82 ("assets" defined).
- (b) Section 84 (assets not allowed).
- (c) Section 94 (valuation of bonds).
- (d) Section 95 (valuation of other securities).
- (e) Section 96 (valuation of property).
- (f) Section 97 (valuation of purchase money mortgages).

(4) Chapter 10 (trade practices and frauds).

(5) The following sections of chapter 22 (organization, corporate procedures of domestic stock and mutual insurers):

- (a) Section 440 (prohibited pecuniary interest of officials).
- (b) Section 442 (home office and records; penalty for unlawful removal of records).
- (c) Section 443 (vouchers for expenditures).
- (d) Section 455 (borrowed surplus).
- (e) Section 463 (mergers and consolidations, mutual insurers).
- (f) Section 465 (bulk reinsurance, mutual insurers).
- (g) Section 466 (mutual member's share of assets on liquidation).
- (h) Section 467 (extinguishment of unused corporate charters).

(6) Chapter 26 (rehabilitations and liquidations).

CHAPTER 24 — BENEVOLENT ASSOCIATIONS

Section 521. **Scope of chapter; provisions exclusive.** (1) This chapter applies only to benevolent associations.

(2) No provision of this code shall apply to any

such association unless contained or referred to in this chapter.

"Benevolent association" defined.

Section 522. **"Benevolent association" defined.** (1) Any corporation, association or society, or by whatever name called, which issues any certificate, policy, membership agreement, or makes any promise or agreement with its members, whereby, upon decease of a member, any money or other benefit, charity, aid or relief is to be paid, provided or rendered by such corporation, association or society to his legal representatives, or to the beneficiary designated by him, which money, benefit, charity, aid or relief is derived from voluntary donations, or from admission fees, dues or assessments, or any of them collected or to be collected from the members thereof, or members of a class therein, or interest or accretions thereon, or accumulations thereof; and wherein the money or other benefit, charity, aid or relief, so realized, is applied to or accumulated for the uses and purposes herein specified, and/or the uses of such corporation, association or society, and/or the expenses of management and prosecution of its business, shall be deemed to be a "benevolent association" for the purposes of this chapter.

(2) The definition of benevolent association in subsection (1) above is not applicable to:

(a) Burial or death benefits, annuities, endowments or any other benefit payments of any legal reserve life or disability insurer, or of any labor union, railroad brotherhood, or lodge having as a primary business the improvement of working conditions; or

(b) Any ladies auxiliaries to any labor union, railroad brotherhood or lodge referred to in subdivision (a) above; or

(c) The benevolent plans within fraternal orders if limited to members and if the plan is not the principal object for the formation or continuance of the fraternal order.

"Member in good standing" defined.

Section 523. **Member — Member in good standing — Defined.** A "member" or "member in good standing" is an individual who must contribute to a benevolent association upon notice of assessment.

Section 524. **Membership contract.** (1) "Membership contract" is any certificate, policy, membership agreement, by whatever name called, or any promise or agreement, of a benevolent association with any or all of its members, whereby any money or other benefit, charity, aid or relief is to be paid, provided or rendered by such association upon the decease of a member to his legal representatives, or to the beneficiary or beneficiaries designated by him.

"Membership contract" defined.

(2) There shall be one contributing member for each membership contract, but a membership contract may cover more than one individual.

Section 525. **"Officer" defined.** "Officer" is any of the individuals having supervision and control of a benevolent association, and engaging in the management and the prosecution of the business thereof, whether designated as officers, trustees, comptrollers, managers or by whatever name called.

"Officer" defined.

Section 526. **New benevolent associations prohibited; foreign associations.** (1) No benevolent association shall transact or be authorized to transact any business in this state unless it lawfully had authority to transact such business as such an association immediately prior to the effective date of this code.

New benevolent associations prohibited.

(2) No new benevolent association shall hereafter be organized or formed in this state.

(3) No association formed or existing under the laws of any other state or jurisdiction shall be authorized to transact business in this state.

Section 527. **Amendments filed with commissioner.** Each benevolent association shall promptly file with the commissioner a copy, certified to by its president and secretary, of each of the following:

Existing associations must file amendments.

(1) If incorporated, any amendment of articles of incorporation or of bylaws;

(2) If not incorporated, any amendment of articles of association, of agreement or of rules or agreements with its members.

(3) Any modification of its form of membership contracts.

Management
by officers—
number.

Section 528. **Officers — Number — Bond.** (1) Each benevolent association shall be in the charge of its officers, and shall not have more than five (5) officers.

Bond required.

(2) The treasurer and any other officer having charge of any funds of a benevolent association shall each be bonded in the amount of one thousand dollars (\$1,000), executed to the State of Montana, joint and several, for the use and benefit of the members or beneficiaries of such association. Each such bond shall be on file in the principal office and address of the association and a certified copy thereof must be filed with the commissioner.

Licensed agents.

Section 529. **Agents — License.** Agents for any benevolent association may be appointed in accordance with chapter 8 of this code, and shall be subject to the applicable provisions of such chapter, except as provided in section 530. No such agent may be appointed if there are less than three (3) officers in charge of the association.

Officers as agents.

Section 530. **Officers as agents.** Not exceeding five (5) officers of any benevolent association may act for the association without obtaining a license as an agent. Such officers shall be subject to the jurisdiction of the commissioner in the same manner as though they were licensed as agents under chapter 8 of this code.

Receipts for
payment required.

Section 531. **Receipts for payment to association.** Every benevolent association shall issue a receipt or other evidence of payment to each person making a payment of any kind to the association.

Minimum
membership.

Section 532. **Minimum membership.** Each benevolent association shall have at all times not less than two hundred (200) members in good standing.

Limitations
on expenses.

Section 533. **Expenses — Assessment for expenses — Shown in annual statement.** (1) The total expenses of any benevolent association during any calendar year shall not exceed the larger of the following:

(a) Ten percent (10%) of the total amount received during such year, whether as assessments, dues, donations

or by whatever name called, except fees collected for new memberships; or

(b) Fifteen dollars (\$15) per death loss incurred during such year.

(2) Such an association may, instead of providing for expenses as in subsection (1) above, assess each of its members for expenses at an amount not to exceed three dollars (\$3) per calendar year, except that such assessment shall not exceed four dollars (\$4) per year where a membership certificate includes within its protection a family group consisting of two (2) or more persons. The proceeds of such assessments shall be placed in an expense fund out of which all of the expenses of the association for such year shall be paid. The association shall show the condition of such expense fund in its annual statement.

Assessments.

(3) The association shall state in its annual statement whether the expenses as to be shown in its next annual statement will be determined as in subsection (1) above, or whether the members will be assessed for the same as in subsection (2) above. No association shall use both methods, nor a combination of such methods.

Annual statement
must show
method.

Section 534. **Payment of death claims.** (1) Each completed proof of claim for death of a member of a benevolent association shall be assigned a number by the association in consecutive order of receipt for each calendar year.

Proof of claim
assigned number.

(2) Payment in full on final settlement of death benefits shall be made by the association to the legal heir or heirs, or the designated beneficiary or beneficiaries, within twenty (20) days after the expiration date stated in the association's notice referred to in section 535 (1) (c).

Payment of
claims—time.

Section 535. **Assessment for death benefit — Notice — Procedure.**

(1) Within thirty (30) days after a benevolent association receives a completed proof of claim for death of a member, it must mail to each of its members in good standing an assessment notice stating:

Assessment
for death claim—
time, notice.

(a) The name, date and place of death of the deceased member;

(b) The number of the proof of death claim assigned thereto by the association;

(c) The amount of the assessment and the expiration date of the assessment payment; and

(d) The number of members in good standing to whom such notices are being sent, as computed from the last completed assessment.

Copy filed with
commissioner.

(2) At the time of mailing the assessment notice required by (1) above, the association shall send a duplicate thereof to the commissioner for filing, together with information as to the mailing of the notice to members.

Required
provisions—
annual statement.

Section 536. **Annual statement.** (1) In addition to compliance with section 65 of this code, the annual statement of a benevolent association shall exhibit the following items and facts:

(a) The name and business address of the association.

(b) The names and addresses of the officers of the association.

(c) The number of membership contracts in force at the commencement of the year and the number of memberships in good standing at the close of the year for which the statement is made. This provision is also applicable to each sub-group or class, if any, of the association.

(d) The number of death losses claimed; the number and total amount of death losses paid; the number of death claims compromised, denied or resisted, and reasons therefor.

(e) The number of assessments in the association and in each sub-group or class, if any; the amount collected in each such assessment; income to the benevolent association from all other sources; and all other fees, assessments, donations, of any kind or nature, except new membership fees from new members.

(f) The expenses actually incurred during the year; debts unpaid at the commencement of the year; debts

and obligations of any kind (not including death losses actually paid) incurred during the year; debts unpaid at the close of the year; a breakdown of expenses to show the amount paid in salaries or commissions, office expense and other expenses, in those cases where members of the benevolent association are assessed for operating expenses of such association.

(g) Whether the association has complied with all of the provisions of sections 533 and 534 of this chapter.

(h) The information required by section 533 of this chapter.

(2) Two (2) officers of the association shall attest under oath to the truth of the facts contained in the annual statement. At least one of such officers must have charge of making up the statement.

(3) A copy of the annual statement certified by the commissioner must be filed before the first day of April each year by the association in the office of the county clerk of the county in which the business office of the association is located.

Copy filed with
county clerk.

Section 537. **Other provisions applicable.** In addition to the provisions contained in this chapter, other chapters and provisions of this code shall apply to benevolent associations, to the extent applicable, as follows:

Other provisions
applicable.

(1) Chapter 1 (scope of code).

(2) Chapter 2 (the commissioner of insurance).

(3) The following sections of chapter 3 (authorization of insurers and general requirements):

(a) Section 46 (certificate of authority required; in general).

(b) Section 50 (name of insurer).

(c) Section 55 (management and affiliations).

(d) Section 58 (continuance, expiration, reinstatement and amendment of certificate of authority).

(e) Section 59 (mandatory revocation, suspension of certificate of authority).

(f) Section 60 (suspension or revocation for violations and special grounds).

(g) Section 61 (notice of suspension or revocation; effect upon agent's authority).

(h) Section 62 (duration of suspension; insurer's obligations; reinstatement).

(i) Section 63 (commissioner attorney for service of process).

(j) Section 64 (serving process; time to plead).

(4) The following provisions of chapter 5 (assets and liabilities):

(a) Section 82 ("assets" defined).

(b) Section 84 (assets not allowed).

(5) Section 130 (prohibited investments).

(6) Chapter 10 (trade practices and frauds).

(7) Chapter 12 (the insurance contract).

(8) The following sections of chapter 22 (organization and corporate procedures of domestic stock and mutual insurers):

(a) Section 440 (prohibited pecuniary interest of officials).

(b) Section 442 (home office and records; penalty for unlawful removal of records).

(c) Section 443 (vouchers for expenditures).

(d) Section 466 (mutual member's share of assets on liquidation).

(e) Section 467 (extinguishment of unused corporate charters).

(9) Chapter 26 (rehabilitations and liquidations).

CHAPTER 25 — RECIPROCAL INSURERS

Section 538. **"Reciprocal" insurance defined.** "Reciprocal" insurance is that resulting from an interexchange among persons, known as "subscribers," of reciprocal agreements of indemnity, the interexchange being effec-

"Reciprocal"
insurance
defined.

uated through an "attorney-in-fact" common to all such persons.

Section 539. **"Reciprocal insurer" defined.** A "reciprocal insurer" means an unincorporated aggregation of subscribers operating individually and collectively through an attorney-in-fact to provide reciprocal insurance among themselves.

"Reciprocal
insurer"
defined.

Section 540. **Scope of chapter — Existing insurers.**

(1) All authorized reciprocal insurers shall be governed by those sections of this chapter not expressly made applicable to domestic reciprocals.

Existing insurers
must comply.

(2) Existing authorized reciprocal insurers shall after the effective date of this code comply with the provisions of this chapter, and shall make such amendments to their subscribers' agreement, power of attorney, policies and other documents and accounts and perform such other acts as may be required for such compliance.

Amendments
required.

Section 541. **Insuring powers of reciprocals.** (1) A reciprocal insurer may, upon qualifying therefor as provided for by this code, transact any kind or kinds of insurance defined by this code, other than life or title insurances.

Rights.

(2) Such an insurer may purchase reinsurance, and may grant reinsurance as to any kind of insurance it is authorized to transact.

Reinsurance.

Section 542. **Name, suits.** A reciprocal insurer shall: (1) Have and use a business name. The name shall include the word "reciprocal," or "interinsurer," or "interinsurance," or "exchange," or "underwriters," or "underwriting."

Name.

(2) Sue and be sued in its own name.

Sue and be sued.

Section 543. **Attorney.** (1) "Attorney," as used in this chapter refers to the attorney-in-fact of a reciprocal insurer. The attorney may be an individual, firm or corporation.

"Attorney"
defined.

(2) The attorney of a foreign or alien reciprocal insurer, which insurer is duly authorized to transact insurance in this state, shall not, by virtue of discharge of its duties as such attorney with respect to the insurer's

Not deemed
doing business.

transactions in this state, be thereby deemed to be doing business in this state within the meaning of any laws of this state applying to foreign firms or corporations.

Surplus funds
required.

Section 544. **Surplus funds required.** (1) A domestic reciprocal insurer hereunder formed, if it has otherwise complied with the applicable provisions of this code, may be authorized to transact insurance if it has and thereafter maintains surplus funds as follows:

(a) To transact property insurance, surplus funds of not less than two hundred thousand dollars (\$200,000);

(b) To transact casualty insurance, (other than workmen's compensation) surplus funds of not less than two hundred thousand dollars (\$200,000).

(2) In addition to surplus required to be maintained under subsection (1) above, the insurer shall have, when first so authorized, expendable surplus in amount as required of a like foreign reciprocal insurer under section 53.

(3) A domestic reciprocal insurer may be authorized to transact additional kinds of insurance if it has otherwise complied with the provisions of this code therefor and possesses and so maintains surplus funds in amount equal to the minimum capital stock required of a stock insurer for authority to transact a like combination of kinds of insurance.

Required number
of organizers.

Section 545. **Organization of reciprocal insurer.** (1) Twenty-five (25) or more persons domiciled in this state may organize a domestic reciprocal insurer and make application to the commissioner for a certificate of authority to transact insurance.

Declaration
must be filed—
provisions.

(2) The proposed attorney shall fulfill the requirements of and shall execute and file with the commissioner when applying for a certificate of authority, a declaration setting forth:

Name.

(a) The name of the insurer;

Offices.

(b) The location of the insurer's principal office, which shall be the same as that of the attorney and shall be maintained within this state;

Kinds of
insurance.

(c) The kinds of insurance proposed to be transacted;

(d) The names and addresses of the original subscribers;

Subscribers.

(e) The designation and appointment of the proposed attorney and a copy of the power of attorney;

Power of
attorney.

(f) The names and addresses of the officers and directors of the attorney, if a corporation, or its members, if a firm;

Names of
attorney.

(g) The powers of the subscribers' advisory committee; and the names and terms of office of the members thereof;

Advisory
committee.

(h) That all monies paid to the reciprocal shall, after deducting therefrom any sum payable to the attorney, be held in the name of the insurer and for the purposes specified in the subscribers' agreement;

Monies paid.

(i) A copy of the subscribers' agreement;

Subscribers'
agreement.

(j) A statement that each of the original subscribers has in good faith applied for insurance of a kind proposed to be transacted, and that the insurer has received from each such subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than six (6) months at an adequate rate therefore filed with and approved by the commissioner;

Statement
of subscribers.

(k) A statement of the financial condition of the insurer, a schedule of its assets, and a statement that the surplus as required by section 544 of this code is on hand; and

Financial and
surplus statement.

(l) A copy of each policy, endorsement and application form it then proposes to issue or use.

Forms.

Such declaration shall be acknowledged by the attorney in the manner required for the acknowledgment of deeds.

Acknowledgment.

Section 546. **Certificate of authority.** (1) The certificate of authority of a reciprocal insurer shall be issued to its attorney in the name of the insurer.

Certificate
of authority
issued to
attorney.

(2) The commissioner may refuse, suspend or revoke the certificate of authority, in addition to other grounds therefor, for failure of the attorney to comply with any provision of this code.

Refusal,
suspension,
revocation
for cause.

Power of attorney.

Section 547. **Power of attorney.** (1) The rights and powers of the attorney of a reciprocal insurer shall be as provided in the power of attorney given it by the subscribers.

Required provisions.

(2) The power of attorney must set forth:

(a) The powers of the attorney;

(b) That the attorney is empowered to accept service of process on behalf of the insurer in actions against the insurer upon contracts exchanged;

(c) The general services to be performed by the attorney;

(d) The maximum amount to be deducted from advance premiums or deposits to be paid to the attorney and the general items of expense in addition to losses, to be paid by the insurer; and

(e) Except as to nonassessable policies, a provision for a contingent several liability of each subscriber in a specified amount which amount shall be not less than one (1) nor more than ten (10) times the premium or premium deposit stated in the policy.

Permissive provisions.

(3) The power of attorney may:

(a) Provide for the right of substitution of the attorney and revocation of the power of attorney and rights thereunder;

(b) Impose such restrictions upon the exercise of the power as are agreed upon by the subscribers;

(c) Provide for the exercise of any right reserved to the subscribers directly or through their advisory committee; and

(d) Contain other lawful provisions deemed advisable.

(4) The terms of any power of attorney or agreement collateral thereto shall be reasonable and equitable, and no such power or agreement shall be used or be effective as to a domestic reciprocal insurer until approved by the commissioner.

Section 548. **Modifications.** Modifications of the terms of the subscribers' agreement or of the power of attorney of a domestic reciprocal insurer shall be made jointly by the attorney and the subscribers' advisory committee. No such modification shall be effective retroactively, nor as to any insurance contract issued prior thereto.

Modifications by attorney and advisory committee.

Section 549. **Attorney's bond.** (1) Concurrently with the filing of the declaration provided for in section 545, the attorney of a domestic reciprocal insurer shall file with the commissioner a bond in favor of this state for the benefit of all persons damaged as a result of breach by the attorney of the conditions of his bond as set forth in subsection (2) hereof. The bond shall be executed by the attorney and by an authorized corporate surety, and shall be subject to the commissioner's approval.

Attorney's bond required.

(2) The bond shall be in the penal sum of twenty-five thousand dollars (\$25,000), aggregate in form, conditioned that the attorney will faithfully account for all monies and other property of the insurer coming into his hands, and that he will not withdraw or appropriate to his own use from the funds of the insurer, any monies or property to which he is not entitled under the power of attorney.

Amount of bond—conditions.

(3) The bond shall provide that it is not subject to cancellation unless thirty (30) days' advance notice in writing of cancellation is given both the attorney and the commissioner.

Time for cancellation.

Section 550. **Action on bond.** Action on the attorney's bond or to recover against any such deposit made in lieu thereof may be brought at any time by one or more subscribers suffering loss through a violation of its conditions, or by a receiver or liquidator of the insurer. Amounts recovered on the bond shall be deposited in and become part of the insurer's funds. The total aggregate liability of the surety shall be limited to the amount of the penalty of such bond.

Action on bond.

Section 551. **Annual statement.** (1) The annual statement of a reciprocal insurer shall be made and filed by its attorney.

Annual statement required.

(2) The statement shall be supplemented by such in-

Commissioner
may require
supplements.

formation as may be required by the commissioner relative to the affairs and transactions of the attorney insofar as they relate to the reciprocal insurer.

Contributions
to reciprocal
insurer.

Section 552. **Contributions to insurer.** The attorney or other parties may advance to a domestic reciprocal insurer upon reasonable terms such funds as it may require from time to time in its operations. Sums so advanced shall not be treated as a liability of the insurer, and, except upon liquidation of the insurer, shall not be withdrawn or repaid except out of the insurer's realized earned surplus in excess of its minimum required surplus. No such withdrawal or repayment shall be made without the advance approval of the commissioner. This section does not apply to bank loans or to loans for which security is given.

Approval of
commissioner.

Method of
determining
financial
condition.

Section 553. **Financial condition—Method of determining.** In determining the financial condition of a reciprocal insurer the commissioner shall apply the following rules:

(1) He shall charge as liabilities the same reserves as are required of incorporated insurers issuing nonassessable policies on a reserve basis.

(2) The surplus deposits of subscribers shall be allowed as assets, except that any premium deposits delinquent for ninety (90) days shall first be charged against such surplus deposit.

(3) The surplus deposits of subscribers shall not be charged as a liability.

(4) All premium deposits delinquent less than ninety (90) days shall be allowed as assets.

(5) An assessment levied upon subscribers, and not collected, shall not be allowed as an asset.

(6) The contingent liability of subscribers shall not be allowed as an asset.

(7) The computation of reserves shall be based upon premium deposits other than membership fees and without any deduction for expenses and the compensation of the attorney.

Subscribers'
qualifications.

Section 554. **Who may be subscribers.** Individuals,

partnerships, and corporations of this state may make application, enter into agreement for and hold policies or contracts in or with and be a subscriber of any domestic, foreign, or alien reciprocal insurer. Any corporation now or hereafter organized under the laws of this state shall, in addition to the rights, powers, and franchises specified in its articles of incorporation, have full power and authority as a subscriber to exchange insurance contracts through such reciprocal insurer. The right to exchange such contracts is hereby declared to be incidental to the purposes for which such corporations are organized and to be as fully granted as the rights and powers expressly conferred upon such corporations. Government or governmental agencies, state or political subdivisions thereof, boards, associations, estates, trustees or fiduciaries are authorized to exchange non-assessable reciprocal interinsurance contracts with each other and with individuals, partnerships and corporations to the same extent that individuals, partnerships and corporations are herein authorized to exchange reciprocal interinsurance contracts. Any officer, representative, trustee, receiver, or legal representative of any such subscriber shall be recognized as acting for or on its behalf for the purpose of such contract but shall not be personally liable upon such contract by reason of acting in such representative capacity.

Section 555. **Subscribers' advisory committee.** (1) The advisory committee of a domestic reciprocal insurer exercising the subscribers' rights shall be selected under such rules as the subscribers adopt.

Selection
of advisory
committee.

(2) Not less than two-thirds of such committee shall be subscribers other than the attorney, or any person employed by, representing, or having a financial interest in the attorney.

Qualification.

(3) The committee shall:

Duties of
committee.

(a) Supervise the finances of the insurer;

(b) Supervise the insurer's operations to such extent as to assure conformity with the subscribers' agreement and power of attorney;

(c) Procure the audit of the accounts and records of

the insurer and of the attorney at the expense of the insurer; and

(d) Have such additional powers and functions as may be conferred by the subscribers' agreement.

Liability of subscribers not joint.

Section 556. **Subscribers' liability.** (1) The liability of each subscriber, other than as to a nonassessable policy, for the obligations of the reciprocal insurer shall be an individual, several and proportionate liability, and not joint.

Contingent assessment liability.

(2) Except as to a nonassessable policy, each subscriber shall have a contingent assessment liability, in the amount provided for in the power of attorney or in the subscribers' agreement, for payment of actual losses and expenses incurred while his policy was in force. Such contingent liability may be at the rate of not less than one (1) nor more than ten (10) times the premium or premium deposit stated in the policy, and the maximum aggregate thereof shall be computed in the manner set forth in section 558 of this chapter.

Policy must contain statement.

(3) Each assessable policy issued by the insurer shall contain a statement of the contingent liability.

Liability on judgment.

Section 557. **Subscribers' liability on judgment.** (1) No action shall lie against any subscriber upon any obligation claimed against the insurer until a final judgment has been obtained against the insurer and remains unsatisfied for thirty days.

Proportionate liability.

(2) Any such judgment shall be binding upon each subscriber only in such proportion as his interests may appear and in amount not exceeding his contingent liability, if any.

Assessments on subscribers—approval.

Section 558. **Assessments.** (1) Assessments may from time to time be levied upon subscribers of a domestic reciprocal insurer liable therefor under the terms of their policies by the attorney upon approval in advance by the subscribers' advisory committee and the commissioner; or by the commissioner in liquidation of the insurer.

Computation—subscribers' share of deficiency.

(2) Each subscriber's share of a deficiency for which an assessment is made, but not exceeding in any event his aggregate contingent liability as stated in accordance with section 556 of this chapter, shall be computed by

applying to the premium earned on the subscriber's policy or policies during the period to be covered by the assessment, the ratio of the total deficiency to the total premiums earned during such period upon all policies subject to the assessment.

(3) In computing the earned premiums for the purposes of this section, the gross premium received by the insurer for the policy shall be used as a base, deducting therefrom solely charges not recurring upon the renewal or extension of the policy.

Gross premium used as base.

(4) No subscriber shall have an offset against any assessment for which he is liable, on account of any claim for unearned premium or losses payable.

Offset prohibited.

Section 559. **Time limit for assessments.** Every subscriber of a domestic reciprocal insurer having contingent liability shall be liable for, and shall pay his share of any assessment, as computed and limited in accordance with this chapter, if:

Time limit for assessments.

(1) While his policy is in force or within one year after its termination, he is notified by either the attorney or the commissioner of his intentions to levy such assessment, or

Notice.

(2) An order to show cause why a receiver, conservator, rehabilitator or liquidator of the insurer should not be appointed is issued while his policy is in force or within one year after its termination.

Order to show cause.

Section 560. **Aggregate liability.** No one policy or subscriber as to such policy, shall be assessed or charged with an aggregate of contingent liability as to obligations incurred by a domestic reciprocal insurer in any one calendar year, in excess of the amount provided for in the power of attorney or in the subscribers' agreement, computed solely upon premium earned on such policy during that year.

Aggregate liability.

Section 561. **Nonassessable policies.** (1) If a reciprocal insurer has a surplus of assets over all liabilities at least equal to the minimum capital stock required of a domestic stock insurer authorized to transact like kinds of insurance, upon application of the attorney and as approved by the subscribers' advisory committee the

Nonassessable policies—authority to extinguish contingent liability.

commissioner shall issue his certificate authorizing the insurer to extinguish the contingent liability of subscribers under its policies then in force in this state, and to omit provisions imposing contingent liability in all policies delivered or issued for delivery in this state for so long as all such surplus remains unimpaired.

Revocation upon
impairment
of surplus.

(2) Upon impairment of such surplus, the commissioner shall forthwith revoke the certificate. Such revocation shall not render subject to contingent liability any policy then in force and for the remainder of the period for which the premium has theretofore been paid; but after such revocation no policy shall be issued or renewed without providing for contingent assessment liability of the subscriber.

Limitation
on authority
of commissioner.

(3) The commissioner shall not authorize a domestic reciprocal insurer so to extinguish the contingent liability of any of its subscribers or in any of its policies to be issued, unless it qualifies to and does extinguish such liability of all its subscribers and in all such policies for all kinds of insurance transacted by it. Except, that if required by the laws of another state in which the insurer is transacting insurance as an authorized insurer, the insurer may issue policies providing for the contingent liability of such of its subscribers as may acquire such policies in such state, and need not extinguish the contingent liability applicable to policies theretofore in force in such state.

Distribution
of savings.

Section 562. **Distribution of savings.** A reciprocal insurer may from time to time return to its subscribers any unused premiums, savings or credits accruing to their accounts. Any such distribution shall not unfairly discriminate between classes of risks, or policies, or between subscribers, but this shall not prevent retrospective rating, nor distribution on a retrospective plan, nor distribution varying as to classes of subscribers based on the experience of such subscribers.

Subscribers
share in assets
upon liquidation.

Section 563. **Subscribers' share in assets.** Upon the liquidation of a domestic reciprocal insurer, its assets remaining after discharge of its indebtedness and policy obligations, the return of any contributions of the attorney or other persons to its surplus made as provided in section 552 of this chapter, and the return of any

unused premium, savings, or credits then standing on subscribers' accounts, shall be distributed to its subscribers who were such within the twelve (12) months prior to the last termination of its certificate of authority, according to such reasonable formula as the commissioner may approve.

Section 564. **Merger or conversion.** (1) A domestic reciprocal insurer upon affirmative vote of not less than two-thirds of its subscribers who vote on such merger pursuant to due notice and the approval of the commissioner of the terms therefor, may merge with another reciprocal insurer or be converted to a stock or mutual insurer.

Merger or
conversion
permitted.

Approval by
commissioner.

(2) Such a stock or mutual insurer shall be subject to the same capital or surplus requirements and shall have the same rights as a like domestic insurer transacting like kinds of insurance.

Capital or surplus
requirements.

(3) The commissioner shall not approve any plan for such merger or conversion which is inequitable to subscribers, or which, if for conversion to a stock insurer, does not give each subscriber preferential right to acquire stock of the proposed insurer proportionate to his interest in the reciprocal insurer as determined in accordance with section 563 of this chapter and a reasonable length of time within which to exercise such right.

Disapproval
for cause.

Section 565. **Impaired reciprocals.** (1) If the assets of a reciprocal insurer are at any time insufficient to discharge its liabilities, other than any liability on account of funds contributed by the attorney or others, and to maintain the required surplus, its attorney shall forthwith make up the deficiency or levy an assessment upon the subscribers for the amount needed to make up the deficiency; but subject to the limitation set forth in the power of attorney or policy.

Impaired
reciprocals—
assessment
for deficiency.

(2) If the attorney fails to make up such deficiency or to make the assessment within thirty (30) days after the commissioner orders him to do so, or if the deficiency is not fully made up within sixty days after the date the assessment was made, the insurer shall be deemed insolvent and shall be proceeded against as authorized by this code.

Insurer failing
to make up
deficiency
deemed
insolvent.

Assessment
on liquidation.

(3) If liquidation of such an insurer is ordered, an assessment shall be levied upon the subscriber for such an amount, subject to limits as provided by this chapter, as the commissioner determines to be necessary to discharge all liabilities of the insurer, exclusive of any funds contributed by the attorney or other persons, but including the reasonable cost of the liquidation.

CHAPTER 26 — REHABILITATION AND LIQUIDATION

Definitions.

Section 566. **Definitions.** For the purpose of this chapter:

"Impairment,"
"insolvency."

(1) "Impairment" or "insolvency." The capital of a stock insurer or the surplus of a mutual or reciprocal insurer, shall be deemed to be impaired and the insurer shall be deemed to be insolvent, when such insurer is not possessed of assets at least equal to all liabilities and required reserves together with its total issued and outstanding capital stock if a stock insurer, or the minimum surplus if a mutual or reciprocal insurer required by this code to be maintained for the kind or kinds of insurance it is then authorized to transact.

"Insurer."

(2) "Insurer" means any person, firm, corporation, association or aggregation of persons doing an insurance business and subject to the insurance supervisory authority of, or to liquidation, rehabilitation, reorganization or conservation by the commissioner or the equivalent insurance supervisory official of another state.

"Delinquency
proceeding."

(3) "Delinquency proceeding" means any proceeding commenced against an insurer pursuant to this chapter for the purpose of liquidating, rehabilitating, reorganizing or conserving such insurer.

"State."

(4) "State" means any state of the United States and also the District of Columbia, Alaska, Hawaii and Puerto Rico.

"Foreign country."

(5) "Foreign country" means territory not in any state.

"Domiciliary
state."

(6) "Domiciliary state" means the state in which an insurer is incorporated or organized, or in the case of an insurer incorporated or organized in a foreign country, the state in which such insurer, having become au-

thorized to do business in such state, has at the commencement of delinquency proceedings, the largest amount of its assets held in trust and assets held on deposit for the benefit of its policyholders or policyholders and creditors in the United States, and any such insurer is deemed to be domiciled in such state.

(7) "Ancillary state" means any state other than a domiciliary state. "Ancillary state."

(8) "Reciprocal state" means any state other than this state in which in substance and effect the provisions of the uniform insurers liquidation act, as defined in section 586 of this code, are in force, including the provisions requiring that the commissioner of insurance or equivalent insurance supervisory official be the receiver of a delinquent insurer. "Reciprocal state."

(9) "General assets" means all property, real, personal, or otherwise, not specifically mortgaged, pledged, deposited or otherwise encumbered for the security or benefit of specified persons or a limited class or classes of persons, and as to such specifically encumbered property the term includes all such property or its proceeds in excess of the amount necessary to discharge the sum or sums secured thereby. Assets held in trust and assets held on deposit for the security or benefit of all policyholders or all policyholders and creditors in the United States shall be deemed general assets. "General assets."

(10) "Preferred claim" means any claim with respect to which the law of the state or of the United States accords priority of payments from the general assets of the insurer. "Preferred claim."

(11) "Special deposit claim" means any claim secured by a deposit made pursuant to statute for the security or benefit of a limited class or classes of persons, but not including any general assets. "Special deposit claim."

(12) "Secured claim" means any claim secured by mortgage, trust deed, pledge, deposit as security, escrow or otherwise, but not including special deposit claim or claims against general assets. The term also includes claims which more than four months prior to the commencement of delinquency proceedings in the state of

the insurer's domicile have become liens upon specific assets by reason of judicial process.

"Receiver."

(13) "Receiver" means receiver, liquidator, rehabilitator or conservator as the context may require.

District court jurisdiction of delinquency proceedings.

Section 567. **Jurisdiction of delinquency proceedings — Venue — Exclusiveness of remedy — Appeal.** (1) The district court is vested with exclusive original jurisdiction of delinquency proceedings under this chapter, and is authorized to make all necessary and proper orders to carry out the purposes of this chapter.

Venue.

(2) The venue of delinquency proceedings against a domestic insurer shall be in the county of the insurer's principal place of business. The venue of such proceedings against foreign and alien insurers shall be in Lewis and Clark county.

Delinquency proceedings brought in name of state.

(3) Delinquency proceedings pursuant to this chapter shall constitute the sole and exclusive method of liquidating, rehabilitating, reorganizing or conserving an insurer, and no court shall entertain a petition for the commencement of such proceedings unless the same has been filed in the name of the state on the relation of the commissioner.

Appeal.

(4) An appeal shall lie to the supreme court from an order granting or refusing rehabilitation, liquidation, or conservation, and from every other order in delinquency proceedings having the character of a final order as to the particular portion of the proceedings embraced therein.

Procedure—delinquency proceedings—order to show cause.

Section 568. **Commencement of delinquency proceedings.** The commissioner shall commence any such proceedings by application to the court for an order directing the insurer to show cause why the commissioner should not have the relief prayed for. On the return of such order to show cause, and after a full hearing, the court shall either deny the application or grant the application, together with such other relief as the nature of the case and the interests of the policyholders, creditors, stockholders, members, subscribers or the public may require.

Injunction may issue.

Section 569. **Injunctions.** (1) Upon application by the commissioner for such an order to show cause, or

at any time thereafter, the court may without notice issue an injunction restraining the insurer, its officers, directors, stockholders, members, subscribers, agents and all other persons from the transaction of its business or the waste or disposition of its property until the further order of the court.

(2) The court may at any time during a proceeding under this chapter issue such injunctions or orders as may be deemed necessary to prevent interference with the commissioner or the proceeding, or waste of the assets of the insurer, or the commencement or prosecution of any actions, or the obtaining of preferences, judgments, attachments or other liens, or the making of any levy against the insurer or against its assets or any part thereof.

(3) Notwithstanding any other provision of law, no bond shall be required of the commissioner as a prerequisite for the issuance of any injunction or restraining order pursuant to this section.

No bond required.

Section 570. **Grounds for rehabilitation — Domestic insurers.** The commissioner may apply to the court for an order appointing him as receiver of and directing him to rehabilitate a domestic insurer upon one or more of the following grounds. That the insurer:

Commissioner may be appointed receiver for rehabilitation. Grounds for rehabilitation.

(1) Is impaired or insolvent;

(2) Has refused to submit any of its books, records, accounts or affairs to reasonable examination by the commissioner;

(3) Has concealed or removed records or assets or otherwise violated section 442 of this code;

(4) Has failed to comply with an order of the commissioner to make good an impairment of capital or surplus or both;

(5) Has transferred or attempted to transfer substantially its entire property or business, or has entered into any transaction the effect of which is to merge substantially its entire property or business in that of any other insurer without having first obtained the written approval of the commissioner;

(6) Has wilfully violated its charter or articles of incorporation or any law of this state;

(7) Has an officer, director or manager who has refused to be examined under oath concerning its affairs;

(8) Has been or is the subject of an application for the appointment of a receiver, trustee, custodian or sequestrator of the insurer or its property otherwise than pursuant to the provisions of this code, but only if such appointment has been made or is imminent and its effect is or would be to oust the courts of this state of jurisdiction hereunder.

(9) Has consented to such an order through a majority of its directors, stockholders, members or subscribers;

(10) Has failed to pay a final judgment rendered against it in this state upon any insurance contract issued or assumed by it, within thirty (30) days after the judgment became final or within thirty (30) days after the time for taking an appeal has expired, or within thirty (30) days after dismissal of an appeal before final termination, whichever date is the later.

Receiver for
liquidation.

Section 571. **Grounds for liquidation.** The commissioner may apply to the court for an order appointing him as receiver (if his appointment as receiver shall not be then in effect) and directing him to liquidate the business of a domestic insurer or of the United States branch of an alien insurer having trustee assets in this state, regardless of whether or not there has been a prior order directing him to rehabilitate such insurer, upon any of the grounds specified in section 570 of this chapter, or if such insurer:

Grounds for
liquidation.

(1) Has ceased transacting business for a period of one year, or

(2) Is an insolvent insurer and has commenced voluntary liquidation or dissolution, or attempts to commence or prosecute any action or proceeding to liquidate its business or affairs, or to dissolve its corporate charter, or to procure the appointment of a receiver, trustee, custodian or sequestrator under any law except this code.

Section 572. **Grounds for conservation—Foreign insurers.** The commissioner may apply to the court for an order appointing him as receiver or ancillary receiver, and directing him to conserve the assets within this state, of a foreign insurer upon any of the following grounds:

Receiver for
conservation—
foreign insurers.

(1) Upon any of the grounds specified in sections 570 or 571 of this chapter, or

Grounds for
conservation.

(2) Upon the ground that its property has been sequestered in its domiciliary sovereignty or in any other sovereignty.

Section 573. **Grounds for conservation—Alien insurers.** The commissioner may apply to the court for an order appointing him as receiver or ancillary receiver, and directing him to conserve the assets within this state, of any alien insurer upon any of the following grounds:

Receiver for
conservation—
alien insurers.

(1) Upon any of the grounds specified in sections 570 or 571 of this chapter.

Grounds for
conservation..

(2) Upon the ground that the insurer has failed to comply, within the time designated by the commissioner, with an order made by him to make good an impairment of its trustee funds, or

(3) Upon the ground that the property of the insurer has been sequestered in its domiciliary sovereignty or elsewhere.

Section 574. **Grounds for ancillary liquidation—Foreign insurers.** The commissioner may apply to the court for an order appointing him as ancillary receiver of and directing him to liquidate the business of a foreign insurer having assets, business or claims in this state upon the appointment in the domiciliary state of such insurer of a receiver, liquidator, conservator, rehabilitator or other officer by whatever name called for the purpose of liquidating the business of such insurer.

Receiver for
liquidation—
foreign insurers—
grounds for
ancillary
liquidation.

Section 575. **Order of rehabilitation—Termination.** (1) An order to rehabilitate a domestic insurer shall direct the commissioner forthwith to take possession of the property of the insurer and to conduct the business thereof, and to take such steps toward removal of the

Order of
rehabilitation.

causes and conditions which have made rehabilitation necessary as the court may direct.

Order of
liquidation.

(2) If at any time the commissioner deems that further efforts to rehabilitate the insurer would be useless, he may apply to the court for an order of liquidation.

Order of
termination.

(3) The commissioner, or any interested person upon due notice to the commissioner, at any time may apply to the court for an order terminating the rehabilitation proceedings and permitting the insurer to resume possession of its property and the conduct of its business, but no such order shall be made or entered except when, after a hearing, the court has determined that the purposes of the proceeding have been fully accomplished.

Order of
liquidation—
domestic insurers.

Section 576. Order of liquidation—Domestic insurers. (1) An order to liquidate the business of a domestic insurer shall direct the commissioner forthwith to take possession of the property of the insurer, to liquidate its business, to deal with the insurer's property and business in his own name as commissioner of insurance or in the name of the insurer, as the court may direct, and to give notice to all creditors who may have claims against the insurer to present such claims.

Order of
dissolution.

(2) The commissioner may apply for and secure an order dissolving the corporate existence of a domestic insurer upon his application for an order of liquidation of such insurer or at any time after such order has been granted.

Order of
liquidation—
alien insurers.

Section 577. Order of liquidation—Alien insurers. An order to liquidate the business of a United States branch of an alien insurer having trustee assets in this state shall be in the same terms as those prescribed for domestic insurers, save and except only that the assets of the business of such United States branch shall be the only assets included therein.

Order of
conservation
or ancillary
liquidation
of foreign,
alien insurers.

Section 578. Order of conservation or ancillary liquidation of foreign or alien insurers. (1) An order to conserve the assets of a foreign or alien insurer shall require the commissioner forthwith to take possession of the property of the insurer within this state and to conserve it, subject to the further direction of the court.

(2) An order to liquidate the assets in this state of a

foreign insurer shall require the commissioner forthwith to take possession of the property of the insurer within this state and to liquidate it subject to the orders of the court and with due regard to the rights and powers of the domiciliary receiver, as provided in this chapter.

Commissioner
shall liquidate
property.

Section 579. Conduct of delinquency proceedings against domestic and alien insurers. (1) Whenever under this chapter a receiver is to be appointed in delinquency proceedings for a domestic or alien insurer, the court shall appoint the commissioner as such receiver. The court shall order the commissioner forthwith to take possession of the assets of the insurer and to administer the same under the orders of the court.

Procedure—
domestic and
alien insurers,
commissioner
takes possession
of insurer's
property.

(2) As a domiciliary receiver, the commissioner shall be vested by operation of law with the title to all of the property, contracts and rights of action, and all of the books and records of the insurer, wherever located, as of the date of entry of the order directing him to rehabilitate or liquidate a domestic insurer or to liquidate the United States branch of an alien insurer domiciled in this state, and he shall have the right to recover the same and reduce the same to possession; except that ancillary receivers in reciprocal states shall have, as to assets located in their respective states, the rights and powers which are herein prescribed for ancillary receivers appointed in this state as to assets located in this state.

Commissioner
vested with title.

Exception—
rights of
ancillary
receivers.

(3) The filing or recording of the order directing possession to be taken, or a certified copy thereof, in any office where instruments affecting title to property are required to be filed or recorded shall impart the same notice as would be imparted by a deed, bill of sale, or other evidence of title duly filed or recorded.

Recording order
as evidence
of title.

(4) The commissioner as domiciliary receiver shall be responsible for the proper administration of all assets coming into his possession or control. The court may at any time require a bond from him or his deputies if deemed desirable for the protection of such assets.

Commissioner
shall administer
assets.

Bond may
be required.

(5) Upon taking possession of the assets of an insurer, the domiciliary receiver shall, subject to the direction of the court, immediately proceed to conduct the business of the insurer or to take such steps as are

Receiver
conducts
business.

authorized by this chapter for the purpose of rehabilitating, liquidating or conserving the affairs or assets of the insurer.

Commissioner may appoint deputies, employ assistants.

(6) In connection with delinquency proceedings, the commissioner may appoint one or more special deputy commissioners to act for him and he may employ such counsel, clerks and assistants as he deems necessary. The compensation of the special deputies, counsel, clerks or assistants and all expenses of taking possession of the insurer and of conducting the proceedings shall be fixed by the receiver, subject to the approval of the court, and shall be paid out of the funds or assets of the insurer. Within the limits of duties imposed upon them, special deputies shall possess all the powers given to and, in the exercise of those powers, shall be subject to all of the duties imposed upon the receiver with respect to such proceedings.

Procedure—foreign insurers.

Section 580. Conduct of delinquency proceedings against foreign insurers. (1) Whenever under this chapter an ancillary receiver is to be appointed in delinquency proceedings for an insurer not domiciled in this state, the court shall appoint the commissioner as ancillary receiver. The commissioner shall file a petition requesting the appointment on the grounds set forth in section 574 of this chapter:

Commissioner petitions to be appointed ancillary receiver for cause—sufficient assets.

(a) If he finds that there are sufficient assets of the insurer located in this state to justify the appointment of an ancillary receiver, or

Petition by claimants.

(b) If ten or more persons resident in this state having claims against such insurer file a petition with the commissioner requesting the appointment of such ancillary receiver.

Domiciliary receiver vested with title.

(2) The domiciliary receiver for the purpose of liquidating an insurer domiciled in a reciprocal state shall be vested by operation of law with the title to all of the property, contracts and rights of action, and all of the books and records of the insurer located in this state, and he shall have the immediate right to recover balances due from local agents and to obtain possession of any books and records of the insurer found in this state. He shall also be entitled to recover the other assets of the insurer located in this state, except that

upon the appointment of an ancillary receiver in this state, the ancillary receiver shall during the ancillary receivership proceedings have the sole right to recover such other assets. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this state, and shall pay the necessary expenses of the proceedings. All remaining assets he shall promptly transfer to the domiciliary receiver. Subject to the foregoing provisions, the ancillary receiver and his deputies shall have the same powers and be subject to the same duties with respect to the administration of such assets as a receiver of an insurer domiciled in this state.

Exception—rights of ancillary receivers.

(3) The domiciliary receiver of an insurer domiciled in a reciprocal state may sue in this state to recover any assets of such insurer to which he may be entitled under the laws of this state.

Receiver may sue.

Section 581. Claims of nonresidents against domestic insurers. (1) In a delinquency proceeding begun in this state against a domestic insurer, claimants residing in reciprocal states may file claims either with the ancillary receivers, if any, in their respective states, or with the domiciliary receiver. All such claims must be filed on or before the last date fixed for the filing of claims in the domiciliary delinquency proceedings.

Nonresidents may file claims with receiver.

(2) Controverted claims belonging to claimants residing in reciprocal states may either:

Places of proving controverted claims.

(a) Be proved in this state, or

(b) If ancillary proceedings have been commenced in such reciprocal states, may be proved in those proceedings. In the event a claimant elects to prove his claim in ancillary proceedings, if notice of the claim and opportunity to appear and be heard is afforded the domiciliary receiver of this state, as provided in section 582 of this chapter with respect to ancillary proceedings in this state, the final allowance of such claim by the courts in the ancillary state shall be accepted in this state as conclusive as to its amount and shall also be accepted as conclusive as to its priority, if any, against special deposits or other security located within the ancillary state.

Claims against
foreign insurers
filed with receiver.

Section 582. **Claims against foreign insurers.** (1) In a delinquency proceeding in a reciprocal state against an insurer domiciled in that state, claimants against such insurer who reside within this state may file claims either with the ancillary receiver, if any, appointed in this state, or with the domiciliary receiver. All such claims must be filed on or before the last date fixed for the filing of claims in the domiciliary delinquency proceedings.

Proof of
controverted
claims.

(2) Controverted claims belonging to claimants residing in this state may either:

(a) Be proved in the domiciliary state as provided by the law of that state, or

Procedure
to prove claim
in this state.

(b) If ancillary proceedings have been commenced in this state, be proved in those proceedings. In the event that any such claimant elects to prove his claim in this state, he shall file his claim with the ancillary receiver and shall give notice in writing to the receiver in the domiciliary state, either by registered mail or by personal service at least forty days prior to the date set for hearing. The notice shall contain a concise statement of the amount of the claim, the facts on which the claim is based, and the priorities asserted, if any. If the domiciliary receiver within thirty days after the giving of such notice shall give notice in writing to the ancillary receiver and to the claimant, either by registered mail or by personal service, of his intention to contest such claim, he shall be entitled to appear or to be represented in any proceeding in this state involving adjudication of the claim. The final allowance of the claim by the courts of this state shall be accepted as conclusive as to its amount and shall also be accepted as conclusive as to its priority, if any, against special deposits or other security located within this state.

Required
provisions—
form of claim.

Section 583. **Form of claim — Notice — Hearing.** (1) All claims against an insurer against which delinquency proceedings have been begun shall set forth in reasonable detail the amount of the claim, or the basis upon which amount can be ascertained, the facts upon which the claim is based, and the priorities asserted, if any. All such claims shall be verified by the affidavit of the claimant, or someone authorized to act on his behalf and

having knowledge of the facts, and shall be supported by such documents as may be material thereto.

(2) All claims filed in this state shall be filed with the receiver, whether domiciliary or ancillary, in this state, on or before the last date of filing as specified in this chapter.

Time for
filing claim.

(3) Within ten days of the receipt of any claim, or within such further period as the court may, for good cause shown, fix, the receiver shall report the claim to the court, specifying in such report his recommendation with respect to the action to be taken thereon. Upon receipt of such report, the court shall fix a time for hearing the claim and shall direct that the claimant or the receiver, as the court shall specify, shall give such notice as the court shall determine to such persons as shall appear to the court to be interested therein. All such notices shall specify the time and place of the hearing and shall concisely state the amount and nature of the claim, the priorities asserted, if any, and the recommendation of the receiver with reference thereto.

Time for
reporting claim.

Hearing
after notice.

(4) At the hearing, all persons interested shall be entitled to appear and the court shall enter an order allowing, allowing in part, or disallowing the claim. Any such order shall be deemed to be an appealable order.

Appealable order.

Section 584. **Priority of certain claims.** (1) In a delinquency proceeding against an insurer domiciled in this state, claims owing to residents of ancillary states shall be preferred claims if like claims are preferred under the laws of this state. All such claims owing to residents or nonresidents shall be given equal priority of payment from general assets regardless of where such assets are located.

Priority
of claims—
domestic insurer.

(2) In a delinquency proceeding against an insurer domiciled in a reciprocal state, claims owing to residents of this state shall be preferred if like claims are preferred by the laws of that state.

Priority
of claims—
foreign insurer.

(3) The owners of special deposit claims against an insurer for which a receiver is appointed in this or any other state shall be given priority against their several special deposits in accordance with the provisions of the statutes governing the creation and maintenance of such

Special deposit
claims.

deposits. If there is a deficiency in any such deposit so that the claims secured thereby are not fully discharged therefrom, the claimants may share in the general assets, but such sharing shall be deferred until general creditors, and also claimants against other special deposits who have received smaller percentages from their respective special deposits, have been paid percentages of their claims equal to the percentage paid from the special deposit.

Secured claims.

(4) The owner of a secured claim against an insurer for which a receiver has been appointed in this or any other state may surrender his security and file his claim as a general creditor, or the claim may be discharged by resort to the security, in which case the deficiency, if any, shall be treated as a claim against the general assets of the insurer on the same basis as claims of unsecured creditors. If the amount of the deficiency has been adjudicated in ancillary proceedings as provided in this chapter, or if it has been adjudicated by a court of competent jurisdiction in proceedings in which the domiciliary receiver has had notice and opportunity to be heard, such amounts shall be conclusive; otherwise the amount shall be determined in the delinquency proceeding in the domiciliary state.

Attachment, garnishment prohibited pending delinquency proceedings.

Section 585. **Attachment and garnishment of assets.** During the pendency of delinquency proceedings in this or any reciprocal state, no action or proceeding in the nature of an attachment, garnishment or execution shall be commenced or maintained in the courts of this state against the delinquent insurer or its assets. Any lien obtained for any such action or proceeding within four months prior to the commencement of any such delinquency proceeding or at any time thereafter shall be void as against any rights arising in such delinquency proceeding.

Uniform insurers liquidation act.

Section 586. **Uniform insurers liquidation act.** (1) Paragraphs (2) to (13) inclusive, of section 566, together with sections 568, 569, and 579 through 585 constitute and may be referred to as the "uniform insurers liquidation act."

(2) The uniform insurers liquidation act shall be so interpreted and construed as to effectuate its general

purpose to make uniform the law of those states that enact it. To the extent that its provisions when applicable conflict with other provisions of this chapter, the provisions of such act shall control.

Section 587. **Deposit of monies collected.** The monies collected by the commissioner in a proceeding under this chapter shall be from time to time deposited in one or more state or national banks, savings banks or trust companies, and in the case of the insolvency or voluntary or involuntary liquidation of any such depository which is an institution organized and supervised under the laws of this state, such deposits shall be entitled to priority of payment on an equality with any other priority given by the banking laws of this state. The commissioner may in his discretion deposit such monies or any part thereof in a national bank or trust company as a trust fund.

Deposit of monies—delinquency proceedings.

Section 588. **Exemption from fees.** The commissioner shall not be required to pay any fee to any public officer in this state for filing, recording, issuing a transcript or certificate or authenticating any paper or instrument pertaining to the exercise by the commissioner of any of the powers or duties conferred upon him under this chapter, whether or not such paper or instrument be executed by the commissioner or his deputies, employees or attorneys of record and whether or not it is connected with the commencement of any action or proceeding by or against the commissioner, or with the subsequent conduct of such action or proceeding.

Exemption from filing fees.

Section 589. **Borrowing on pledge of assets.** For the purpose of facilitating the rehabilitation, liquidation, conservation or dissolution of an insurer pursuant to this chapter, the commissioner may, subject to the approval of the court, borrow money and execute, acknowledge and deliver notes or other evidences of indebtedness therefor and secure the repayment of the same by the mortgage, pledge, assignment, transfer in trust, or hypothecation of any or all of the property, whether real, personal or mixed, of such insurer, and the commissioner subject to the approval of the court shall have power to take any and all other action necessary and proper to consummate any such loan and to provide for the repayment thereof. The commissioner shall be under no obli-

Authority of commissioner to borrow money—approval of court.

gation personally or in his official capacity to repay any loan made pursuant to this section.

Date of order of liquidation fixes rights, liabilities.

Section 590. **Date rights fixed on liquidation.** The rights and liabilities of the insurer and of its creditors, policyholders, stockholders, members, subscribers and all other persons interested in its estate shall, unless otherwise directed by the court, be fixed as of the date on which the order directing the liquidation of the insurer is filed in the office of the clerk of the court which made the order, subject to the provisions of this chapter with respect to the rights of claimants holding contingent claims.

Transfers, liens made 4 months prior to order to show cause void.

Section 591. **Voidable transfers.** (1) Any transfer of, or lien upon, the property of an insurer which is made or created within four months prior to the granting of an order to show cause under this chapter with the intent of giving to any creditor a preference or of enabling him to obtain a greater percentage of his debt than any other creditor of the same class and which is accepted by such creditor having reasonable cause to believe that such preference will occur, shall be voidable.

Participant's personal liability and duty to account.

(2) Every director, officer, employee, stockholder, member, subscriber and any other person acting on behalf of such insurer who shall be concerned in any such act or deed and every person receiving thereby any property of such insurer or the benefit thereof shall be personally liable therefor and shall be bound to account to the commissioner.

Authority to avoid transfers, liens except as to bona fide holder for value.

(3) The commissioner as receiver in any proceeding under this chapter may avoid any transfer of or lien upon the property of an insurer which any creditor, stockholder, subscriber or member of such insurer might have avoided and may recover the property so transferred unless such person was a bona fide holder for value prior to the date of the entering of an order to show cause under this chapter. Such property or its value may be recovered from anyone who has received it except a bona fide holder for value as herein specified.

Priority of claims for compensation.

Section 592. **Priority of claims for compensation.** (1) Compensation actually owing to employees other than officers of an insurer, for services rendered within three months prior to the commencement of a proceeding

against the insurer under this chapter, but not exceeding five hundred dollars (\$500) for each employee, shall be paid prior to the payment of any other debt or claim, and in the discretion of the commissioner may be paid as soon as practicable after the proceeding has been commenced; except that at all times the commissioner shall reserve such funds as will in his opinion be sufficient for the expenses of administration.

(2) Such priority shall be in lieu of any other similar priority which may be authorized by law as to wages or compensation of such employees.

Section 593. **Offsets.** (1) In all cases of mutual debts or mutual credits between the insurer and another person in connection with any action or proceeding under this chapter, such credits and debts shall be set off and the balance only shall be allowed or paid, except as provided in subsection (2) below.

Offsets—mutual debts or credits.

(2) No offset shall be allowed in favor of any such person where:

(a) The obligation of the insurer to such person would not at the date of the entry of any liquidation order or otherwise, as provided in section 590, entitle him to share as a claimant in the assets of the insurer, or

Offset not allowed except to claimant.

(b) The obligation of the insurer to such person was purchased by or transferred to such person with a view of its being used as an offset, or

Offset not allowed on purchased obligation.

(c) The obligation of such person is to pay an assessment levied against the members of a mutual insurer, or against the subscribers of a reciprocal insurer, or is to pay a balance upon the subscription to the capital stock of a stock insurer.

Offset not allowed on assessment or subscription.

Section 594. **Allowance of certain claims.** (1) No contingent and unliquidated claim shall share in a distribution of the assets of an insurer which has been adjudicated to be insolvent by an order made pursuant to this chapter, except that such claim shall be considered, if properly presented, and may be allowed to share where:

Contingent and unliquidated claims.

(a) Such claim becomes absolute against the insurer

Time for filing.

on or before the last day for filing claims against the assets of such insurer, or

Surplus.

(b) There is a surplus and the liquidation is thereafter conducted upon the basis that such insurer is solvent.

Cause of action.

(2) Where an insurer has been so adjudicated to be insolvent any person who has a cause of action against an insured of such insurer under a liability insurance policy issued by such insurer shall have the right to file a claim in the liquidation proceeding, regardless of the fact that such claim may be contingent, and such claim may be allowed:

Proof of judgment.

(a) If it may be reasonably inferred from the proof presented upon such claim that such person would be able to obtain a judgment upon such cause of action against such insured, and

No further claim.

(b) If such person shall furnish suitable proof, unless the court for good cause shown shall otherwise direct, that no further valid claim against such insurer arising out of his cause of action other than those already presented can be made, and

Total liability.

(c) If the total liability of such insurer to all claimants arising out of the same act of its insured shall be no greater than its maximum liability would be were it not in liquidation.

Limitations on evidence.

(3) No judgment against such an insured taken after the date of entry of the liquidation order shall be considered in the liquidation proceedings as evidence of liability, or of the amount of damages, and no judgment against an insured taken by default, or by collusion prior to the entry of the liquidation order shall be considered as conclusive evidence in the liquidation proceedings, either of the liability of such insured to such person upon such cause of action or of the amount of damages to which such person is therein entitled.

Limitations on amount of claim.

(4) No claim of any secured claimant shall be allowed at a sum greater than the difference between the value of the claim without security and the value of the security itself as of the date of the entry of the order of liquidation or such other date set by the court for

determining rights and liabilities as provided in section 590 unless the claimant shall surrender his security to the commissioner, in which event the claim shall be allowed in the full amount for which it is valued.

Section 595. **Time to file claims.** (1) If upon the entry of an order of liquidation under this chapter or at any time thereafter during liquidation proceedings the insurer shall not be clearly solvent, the court shall, upon hearing after such notice it deems proper, make and enter an order adjudging the insurer to be insolvent.

Order of insolvency.

(2) After the entry of the order of insolvency, regardless of any prior notice that may have been given to creditors, the commissioner shall notify all persons who may have claims against such insurer to file such claims with him, at a place and within the time specified in the notice, or that such claims shall be forever barred. The time specified in the notice shall be as fixed by the court for filing of claims and which shall be not less than six (6) months after the entry of the order of insolvency. The notice shall be given in such manner and for such reasonable period of time as may be ordered by the court.

Notice fixing date for filing claims.

Section 596. **Report and petition for assessment.** Within three years after the date of the entry of an order of rehabilitation or liquidation of a domestic mutual insurer or a domestic reciprocal insurer, the commissioner may make and file his report and petition to the court setting forth:

Report and petition for assessment within three years after date of order of rehabilitation or liquidation.

(1) The reasonable value of the assets of the insurer;

(2) The liabilities of the insurer to the extent thus far ascertained by the commissioner;

(3) The aggregate amount of the assessment, if any, which the commissioner deems reasonably necessary to pay all claims, the costs and expenses of the collection of the assessments and the costs and expenses of the delinquency proceedings in full;

(4) Any other information relative to the affairs or property of the insurer that the commissioner deems material.

Order and levy
of assessment.

Section 597. **Order and levy of assessment.** (1) Upon the filing and reading of the report and petition provided for in section 596, the court, ex-parte, may order the commissioner to assess all members or subscribers of the insurer who may be subject to such an assessment, in such an aggregate amount as the court finds reasonably necessary to pay all valid claims as may be timely filed and proved in the delinquency proceedings, together with the costs and expenses of levying and collecting assessments and the costs and expenses of the delinquency proceedings in full. Any such order shall require the commissioner to assess each such member or subscriber for his proportion of the aggregate assessment, according to such reasonable classification of such members or subscribers and formula as may be made by the commissioner and approved by the court.

Additional
assessments
within three years.

(2) The court may order additional assessments upon the filing and reading of any amendment or supplement to the report and petition referred to in subsection (1) above, if such amendment or supplement is filed within three (3) years after the date of the entry of the order of rehabilitation or liquidation.

(3) After the entry of the order to levy and assess members or subscribers of an insurer referred to in (1) or (2) above, the commissioner shall levy and assess members or subscribers in accordance with the order.

Total of
assessments
limited to
amount of policy.

(4) The total of all assessments against any member or subscriber with respect to any policy, whether levied pursuant to this chapter or pursuant to any other provision of this code, shall be for no greater amount than that specified in the policy or policies of the member or subscriber and as limited under this code, except as to any policy which was issued at a rate of premium below the minimum rate lawfully permitted for the risk insured, in which event the assessment against any such policyholder shall be upon the basis of the minimum rate for such risk.

(5) No assessment shall be levied against any member or subscriber with respect to any nonassessable policy issued in accordance with this code.

Assessment
prima facie
correct.

Section 598. **Assessment prima facie correct — Notice — Payment — Proceedings to collect.** (1) Any assessment

of a subscriber or member of an insurer made by the commissioner pursuant to the order of court fixing the aggregate amount of the assessment against all members or subscribers and approving the classification and formula made by the commissioner under section 597 shall be prima facie correct.

(2) Each member or subscriber shall be notified of the amount of assessment to be paid by him by written notice mailed to the address of the member or subscriber last of record with the insurer. Failure of the member or subscriber to receive the notice so mailed, within the time specified therein for the payment of the assessment or at all, shall be no defense in any proceeding to collect the assessment.

Notice of
assessment.

(3) If any such member or subscriber fails to pay the assessment within the period specified in the notice, which period shall not be less than twenty (20) days after mailing, the commissioner may obtain an order in the delinquency proceedings requiring the member or subscriber to show cause at a time and place fixed by the court why judgment should not be entered against such member or subscriber for the amount of the assessment together with all costs, and a copy of the order and a copy of the petition therefor shall be served upon the member or subscriber within the time and in the manner designated in the order.

Order to show
cause on failure
to pay.

(4) If the subscriber or member after due service of a copy of the order and petition referred to in (3) above is made upon him:

Judgment.

(a) Fails to appear at the time and place specified in the order, judgment shall be entered against him as prayed for in the petition; or

(b) Appears in the manner and form required by law in response to the order, the court shall hear and determine the matter and enter a judgment in accordance with its decision.

(5) The commissioner may collect any such assessment through any other lawful means.

Enforcement
of judgment.

CHAPTER 27 — TRUSTEED ASSETS OF ALIEN INSURERS

Section 599. **Scope of chapter.** This chapter applies

to all alien insurers using Montana as a state of entry to transact insurance in the United States.

Required deposit—
alien insurer using
state for entry.

Section 600. **Required deposit of assets.** (1) An alien insurer may use Montana as a state of entry to transact insurance in the United States by making and maintaining in this state a deposit of assets in trust with a solvent bank or trust company approved by the commissioner.

Amount of
deposit.

(2) The deposit, together with other trust deposits of the insurer held in the United States for the same purpose, shall be in amount not less than the deposits required of an alien insurer under section 54 (1) of this code, and shall consist of cash and/or securities of the same character and diversification as those eligible for the investment of the funds of domestic insurers under chapter 6 of this code.

"Trusteed assets."

(3) Such a deposit may be referred to as "trusteed assets."

Existing trusts.

Section 601. **Existing trusts.** All trusts of trusteed assets heretofore created and now existing shall be continued under the instruments creating them, unless inconsistent with the provisions of this chapter.

Purpose, duration
of deposit.

Section 602. **Purpose and duration.** The deposit required by section 600 shall be for the benefit, security and protection of the policyholders, or policyholders and creditors, of the insurer in the United States. It shall be maintained as long as there is outstanding any liability of the insurer arising out of its insurance transactions in the United States.

Written trust
agreement
required.

Section 603. **Trust agreement; approval.** (1) The deposit referred to in section 600 shall be made under a written trust agreement between the insurer and the trustee, consistent with the provisions of this chapter, and shall be authenticated in such form and manner as the commissioner may designate or approve.

Effective
on approval.

(2) The agreement shall not be effective until filed with and approved in writing by the commissioner. The commissioner shall not approve any trust agreement found by him not to be in compliance with law, or the terms of which do not in fact provide reasonably ade-

quate protection for the insurer's policyholders or policyholders and creditors in the United States.

Section 604. **Authority to execute trust agreement.** An alien insurer using or proposing to use Montana as a state of entry to transact insurance in the United States, whether or not it is then authorized to transact insurance in this state, is authorized to make and execute any trust agreement required by this chapter.

Authority of
alien insurer to
execute trust
agreement.

Section 605. **Amendment of trust agreement.** A trust agreement may be amended, but the amendment shall not be effective until filed with and approved in writing by the commissioner as being in compliance with this chapter.

Amendment
effective
on approval.

Section 606. **Withdrawal of approval.** The commissioner's approval of any trust agreement or of any amendment thereof may be withdrawn by the commissioner if he finds upon hearing, after notice thereof to the insurer and the trustee or trustees, that the requisites for such approval, as provided in this chapter, no longer exist.

Withdrawal
of approval
for cause.

Section 607. **Title to trusteed assets.** Title to the trusteed assets is vested in the trustee or trustees and their successors for the purposes of the trust deposit, and the trust agreement shall so provide.

Title of assets
vested in trustees.

Section 608. **Assets kept separate.** The trustee shall keep the trusteed assets separate from other assets and shall maintain a record thereof sufficient to identify trusteed assets at all times.

Trusteed assets
kept separate.

Section 609. **Statement of trustee.** (1) The trustee of trusteed assets shall, from time to time, file with the commissioner statements, in such form as he may designate and request in writing, certifying the character of such assets and the amounts thereof.

Statement of
trustee
on request.

(2) If the trustee fails to file any such statement after request therefor and expiration of a reasonable time thereafter, the commissioner may suspend or revoke the certificate of authority of the insurer.

Effect of
noncompliance.

Section 610. **Examination of assets.** The commissioner may examine trusteed assets of any insurer at any time in accordance with the same conditions and procedures

Commissioner
may examine
assets.

as govern the examination of insurers in general under chapter 2 of this code.

Approval required—
withdrawal
of assets.

Section 611. **Withdrawal of assets.** (1) The trust agreement shall provide, in substance, that no withdrawals of trustee assets shall be made by the insurer or permitted by the trustee without the written authorization or approval of the commissioner in advance thereof, except as follows:

Earnings paid to
United States
manager.

(a) Any or all income, earnings, dividends or interest accumulations of the trustee assets may be paid over to the United States manager of the insurer upon request of the insurer or the manager.

Substitution
of securities.

(b) For substitution, coincidentally with such withdrawal, of other securities or assets of value at least equal in amount to those being withdrawn, if such substituted securities or assets are likewise such as are eligible for investment of the funds of domestic insurers under chapter 6 of this code, if such withdrawal is requested in writing by the insurer's United States manager pursuant to general or specific written authority previously given or delegated by the insurer's board of directors or other similar governing body, and a copy of such authority has been filed with the trustee.

Deposits in
other states.

(c) For the purpose of making deposits required by law in any state in which the insurer is or thereafter becomes an authorized insurer, for the protection of the insurer's policyholders or policyholders and creditors in such state or in the United States, if such withdrawal does not reduce the insurer's deposit in this state to an amount less than the minimum deposit required under section 54 (1) (c) (i) and (ii) of this code. The trustee shall transfer any assets so withdrawn and in the amount so required to be deposited in the other state direct to the depository required to receive such deposit in such other state, as certified in writing by the public official having supervision of insurance in the other state.

Transfer of
trustee assets
to liquidator,
conservator,
rehabilitator.

(d) For the purpose of transferring the trustee assets to an official liquidator, conservator or rehabilitator pursuant to the order of a court of competent jurisdiction.

Approval limited
to excess assets.

(2) The commissioner shall so authorize or approve

withdrawal of only such assets as are in excess of the amount of assets required to be so held in trust under section 600, or as may otherwise be consistent with the provisions of this chapter.

(3) If at any time the insurer becomes insolvent, or if its assets held in the United States are less in amount than as required under section 54 (1) (c) of this code, upon determination thereof the commissioner shall in writing order the trustee to suspend the right of the insurer or any other person to withdraw assets as authorized under subdivisions (a), (b) and (c) of subsection (1) above, and the trustee shall comply with such order and until the further order of the commissioner.

Suspension
of right of
withdrawal
on insolvency.

Section 612. **Substitution of trustee.** (1) A new trustee or new trustees may be substituted for the original trustee or trustees of trustee assets in the event of a vacancy or for other proper cause. Any such substitution shall be subject to the commissioner's approval.

Substitution
of trustee
for cause.

(2) If the trustees of any trustee assets heretofore created are individuals, and if the number of such trustees is reduced to less than three (3) by death, resignation or otherwise, the commissioner shall require that there be substituted for such trustees a bank or trust company in this state approved by him.

Substitution
in event
of vacancy.

Section 613. **Canadian insurers.** The provisions of this chapter applicable to a United States manager shall, in the case of insurers domiciled in Canada, be deemed to refer to the president, vice-president, secretary or treasurer of such a Canadian insurer.

Canadian
insurers—
United States
manager defined.

CHAPTER 28 —

FRATERNAL BENEFIT SOCIETIES

Section 614. **Fraternal benefit societies defined.** Any incorporated society, order or supreme lodge, without capital stock, including one exempted under the provisions of section 618 (b) of this chapter whether incorporated or not, conducted solely for the benefit of its members and their beneficiaries and not for profit, operated on a lodge system with ritualistic form of work, having a representative form of government, and which makes provision for the payment of benefits in accordance with

Fraternal benefit
societies defined.

this chapter, is hereby declared to be a fraternal benefit society.

"Society" defined. When used in this chapter the word "society," unless otherwise indicated, means fraternal benefit society.

Lodge system defined. Section 615. **Lodge system defined.** A society having a supreme legislative or governing body and subordinate lodges or branches by whatever name known, into which members are elected, initiated or admitted in accordance with its constitution, laws, ritual and rules, which subordinate lodges or branches are required by the laws of the society to hold regular meetings at least once in each month, shall be deemed to be operating on the lodge system.

Representative form of government defined. Section 616. **Representative form of government defined.** A society shall be deemed to have a representative form of government when:

Requirements—elected governing body. (1) It provides in its constitution or laws for a supreme legislative or governing body, composed of representatives elected either by the members or by delegates elected directly or indirectly by the members, together with such other members of such body as may be prescribed by the society's constitution and laws;

Votes required. (2) The representatives elected constitute a majority in number and have not less than two-thirds of the votes nor less than the votes required to amend its constitution and laws;

Meetings. (3) The meetings of the supreme legislative or governing body and the election of officers, representatives or delegates are held as often as once in four (4) calendar years;

Board of directors. (4) The society has a board of directors charged with the responsibility for managing its affairs in the interim between meetings of its supreme legislative or governing body, subject to control by such body and having powers and duties delegated to it in the constitution or laws of the society;

Election of board—vacancy. (5) Such board of directors is elected by the supreme legislative or governing body, except in case of filling a vacancy in the interim between meetings of such body;

(6) The officers are elected either by the supreme legislative or governing body or by the board of directors; and

(7) The members, officers, representatives or delegates shall not vote by proxy.

Section 617. **Chapter exclusive; applicability of other laws.** Except as herein provided, societies shall be governed by this chapter and shall be exempt from all other provisions of the insurance laws of this state, not only in governmental relations with the state, but for every other purpose. No law hereafter enacted shall apply to them, unless they be expressly designated therein.

Section 618. **Exempted societies.** (1) Nothing contained in this chapter shall be so construed as to affect or apply to:

(a) Grand or subordinate lodges of societies, orders or associations now doing business in this state which provide benefits exclusively through local or subordinate lodges;

(b) Orders, societies or associations which admit to membership only persons engaged in one or more crafts or hazardous occupations, in the same or similar lines of business, and the ladies' societies or ladies' auxiliaries to such orders, societies or associations;

(c) Domestic societies which limit their membership to employees of a particular city or town, designated firm, business house or corporation which provide for a death benefit of not more than four hundred dollars (\$400) or disability benefits of not more than three hundred fifty dollars (\$350) to any person in any one year, or both; or

(d) Domestic societies or associations of a purely religious, charitable or benevolent description, which provide for a death benefit of not more than four hundred dollars (\$400) or for disability benefits of not more than three hundred fifty dollars (\$350) to any one person in any one year, or both.

(2) Any such society or association described in clauses (c) or (d), above, which provides for death or disability benefits for which benefit certificates are

Election of officers.

Vote by proxy prohibited.

This chapter exclusive.

Exempted societies.

Benefits provided through local lodges.

Craft societies and auxiliaries.

Domestic societies limiting death benefits to \$400—limited membership.

Religious charitable societies—limiting death benefits to \$400.

Societies issuing benefit certificates having more than 1,000 members not exempt.

issued, and any such society or association included in paragraph (d) which has more than one thousand (1,000) members, shall not be exempted from the provisions of this chapter but shall comply with all requirements thereof.

Exempt societies cannot allow compensation.

(3) No society which, by the provisions of this section, is exempt from the requirements of this chapter, except any society described in paragraph (b), above, shall give or allow, or promise to give or allow to any person any compensation for procuring new members.

Societies providing accident benefits not exempt except as to medical examination, valuation of benefit certificates, incontestability.

(4) Every society which provides for benefits in case of death or disability resulting solely from accident, and which does not obligate itself to pay natural death or sick benefits shall have all of the privileges and be subject to all the applicable provisions and regulations of this chapter except that the provisions thereof relating to medical examination, valuations of benefit certificates, and incontestability, shall not apply to such society.

Commissioner may require information.

(5) The commissioner may require from any society or association, by examination or otherwise, such information as will enable him to determine whether such society or association is exempt from the provisions of this chapter.

Insurance laws do not apply to exempt societies.

(6) Societies, exempted under the provisions of this section, shall also be exempt from all other provisions of the insurance laws of this state.

Existing societies—renewal of licenses.

Section 619. **Annual license.** Societies which are now authorized to transact business in this state may continue such business until the first day of June next succeeding the effective date of this chapter. The authority of such societies and all societies hereafter licensed, may thereafter be renewed annually, but in all cases to terminate on the first day of the succeeding June. However, a license so issued shall continue in full force and effect until the new license be issued or specifically refused. For each such license or renewal the society shall pay the commissioner ten dollars (\$10). A duly certified copy or duplicate of such license shall be prima facie evidence that the licensee is a fraternal benefit society within the meaning of this chapter.

License fee.

Section 620. Foreign or alien society—Admission.

Foreign or alien societies—licenses.

(1) No foreign or alien society shall transact business in this state without a license issued by the commissioner. Any such society may be licensed to transact business in this state upon filing with the commissioner:

(a) A duly certified copy of its charter or articles of incorporation;

Requirements for admission.

(b) A copy of its constitution and laws, certified by its secretary or corresponding officer;

(c) A power of attorney to the commissioner as prescribed in section 665;

(d) A statement of its business under oath of its president and secretary or corresponding officers in a form prescribed by the commissioner, duly verified by an examination made by the supervising insurance official of its home state or other state, territory, province or country, satisfactory to the commissioner;

(e) A certificate from the proper official of its home state, territory, province or country that the society is legally incorporated and licensed to transact business therein;

(f) Copies of its certificate forms; and

(g) Such other information as he may deem necessary; and upon a showing that its assets are invested in accordance with the provisions of this chapter.

(2) Any foreign or alien society desiring admission to this state shall have the qualifications required of domestic societies organized under this chapter.

Qualifications.

Section 621. **Suspension, revocation or refusal of license of foreign or alien society.** (1) When the commissioner upon investigation finds that a foreign or alien society transacting or applying to transact business in this state:

Suspension, revocation or refusal of license—foreign or alien society.

(a) Has exceeded its powers;

(b) Has failed to comply with any of the provisions of this chapter;

(c) Is not fulfilling its contracts in good faith; or

(d) Is conducting its business fraudulently or in a manner hazardous to its members or creditors or the public;

He shall notify the society of his findings, state in writing the reasons for his dissatisfaction and require the society to show cause on a date named why its license should not be suspended, revoked or refused. If on such date the society does not present good and sufficient reason why its authority to do business in this state should not be suspended, revoked or refused, he may suspend or refuse the license of the society to do business in this state until satisfactory evidence is furnished to him that such suspension or refusal should be withdrawn or he may revoke the authority of the society to do business in this state.

Existing contracts preserved.

(2) Nothing contained in this section shall be taken or construed as preventing any such society from continuing in good faith all contracts made in this state during the time such society was legally authorized to transact business herein.

Procedure—organization of fraternal benefit society.

Persons who may submit articles of incorporation.

Section 622. **Organization — Incorporation.** The organization of a society shall be governed as follows:

Seven (7) or more citizens of the United States, a majority of whom are citizens of this state, who desire to form a fraternal benefit society, may make, sign and acknowledge before some officer, competent to take acknowledgment of deeds, articles of incorporation, in which shall be stated:

Required provisions—name.

(1) The proposed corporate name of the society, which shall not so closely resemble the name of any society or insurance company as to be misleading or confusing;

Purposes.

(2) The purposes for which it is being formed and the mode in which its corporate powers are to be exercised. Such purposes shall not include more liberal powers than are granted by this chapter, provided that any lawful social, intellectual, educational, charitable, benevolent, moral, fraternal or religious advantages may be set forth among the purposes of the society; and

Names of incorporators, officers.

(3) The names and residences of the incorporators and the names, residences and official titles of all the

officers, trustees, directors, or other persons who are to have and exercise the general control of the management of the affairs and funds of the society for the first year or until the ensuing election at which all such officers shall be elected by the supreme legislative or governing body, which election shall be held not later than one year from the date of the issuance of the permanent certificate.

Section 623. **Filing articles and documents — Preliminary certificate.** Such articles of incorporation, duly certified copies of the constitution, laws and rules, copies of all proposed forms of certificates, applications therefor, and circulars to be issued by the society and a bond conditioned upon the return to applicants of the advanced payments if the organization is not completed within one year, shall be filed with the commissioner, who may require such further information as he deems necessary. The bond with sureties approved by the commissioner shall be in such amount, not less than five thousand dollars (\$5,000) nor more than twenty-five thousand dollars (\$25,000), as required by the commissioner. All documents filed are to be in the English language. If the purposes of the society conform to the requirements of this chapter and all provisions of the law have been complied with, the commissioner shall so certify, retain and file the articles of incorporation and furnish the incorporators a preliminary certificate authorizing the society to solicit members as hereinafter provided.

Filing articles and documents required.

Bond required.

Preliminary certificate.

Section 624. **Time for completing organization.** No preliminary certificate granted under the provisions of this section shall be valid after one year from its date or after such further period, not exceeding one year, as may be authorized by the commissioner upon cause shown, unless the five hundred (500) applicants hereinafter required have been secured and the organization has been completed as herein provided. The articles of incorporation and all other proceedings thereunder shall become null and void in one year from the date of the preliminary certificate, or at the expiration of the extended period, unless the society shall have completed its organization and received a certificate of authority to do business as hereinafter provided.

Certificate valid after one year only on securing 500 applicants.

Completion— one year.

Section 625. **Initial solicitations and qualifications.**

Society may
solicit members,
collect premiums.

No other liability
permitted until
organization
is completed—
requirements.

Aggregate
of applications.

Evidence of
insurability.

Certificates
approved by
medical examiner.

Ten subordinate
lodges established.

List of applicants
submitted to
commissioner.

Statement
of paid-in
premiums.

Advance premiums
held in trust.

Upon receipt of a preliminary certificate from the commissioner, the society may solicit members for the purpose of completing its organization, shall collect from each applicant the amount of not less than one regular monthly premium in accordance with its table of rates as provided by its constitution and laws, and shall issue to each such applicant a receipt for the amount so collected. No society shall incur any liability other than for the return of such advance premium, nor issue any certificate, nor pay, allow, or offer or promise to pay or allow, any death or disability benefit to any person until:

(1) Actual bona fide applications for death benefits have been secured aggregating at least five hundred thousand dollars (\$500,000) on not less than five hundred (500) lives;

(2) All such applicants for death benefits shall have furnished evidence of insurability satisfactory to the society;

(3) Certificates of examinations or acceptable declarations of insurability have been duly filed and approved by the chief medical examiner of the society;

(4) Ten (10) subordinate lodges or branches have been established into which the five hundred (500) applicants have been admitted;

(5) There has been submitted to the commissioner, under oath of the president or secretary, or corresponding officer of the society, a list of such applicants, giving their names, addresses, date each was admitted, name and number of the subordinate branch of which each applicant is a member, amount of benefits to be granted and premiums therefor; and

(6) It shall have been shown to the commissioner, by sworn statement of the treasurer, or corresponding officer of such society, that at least five hundred (500) applicants have each paid in cash at least one regular monthly premium as herein provided, which premiums in the aggregate shall amount to at least twenty-five hundred dollars (\$2,500), all of which shall be credited to the fund or funds from which benefits are to be paid and no part of which may be used for expenses. Such advance premiums shall be held in trust during the period

of organization and if the society has not qualified for a certificate of authority within one year, as herein provided, the premiums shall be returned to the applicants.

Section 626. **Certificate of compliance; certified copy as evidence.** The commissioner may make such examination and require such further information as he deems advisable. Upon presentation of satisfactory evidence that the society has complied with all the provisions of law, he shall issue to the society a certificate to that effect and that the society is authorized to transact business pursuant to the provisions of this chapter. The certificate shall be prima facie evidence of the existence of the society at the date of such certificate. The commissioner shall cause a record of such certificate to be made. A certified copy of such record may be given in evidence with like effect as the original certificate.

Certificate
of authority—
effect as
evidence.

Section 627. **Constitution and laws; general powers.**

(1) Every society shall have the power to adopt a constitution and laws for the government of the society, the admission of its members, the management of its affairs and the fixing and readjusting of the rates of its members from time to time. It shall have the power to change, alter, add to or amend such constitution and laws.

Power of societies
to adopt
constitution
and laws.

(2) A society shall have such other powers as are necessary and incidental to carrying into effect the objects and purposes of the society.

Incidental powers.

Section 628. **Corporate powers retained.** Any incorporated society authorized to transact business in this state at the time this chapter becomes effective may thereafter exercise all the rights, powers and privileges prescribed in this chapter and in its charter or articles of incorporation as far as consistent with this chapter. A domestic society shall not be required to reincorporate.

Existing
incorporated
societies—
powers.

Section 629. **Existing voluntary associations — May incorporate.**

Existing voluntary
associations may
incorporate
within one year.

(1) After one year from the effective date of this chapter, no unincorporated or voluntary association shall be permitted to transact business in this state as a fraternal benefit society.

(2) Any domestic voluntary association now author-

ized to transact business in this state may incorporate and shall receive from the commissioner a permanent certificate of incorporation as a fraternal benefit society when:

(a) It has completed its conversion to an incorporated society not later than one year from the effective date of this chapter;

(b) It has filed its articles of incorporation and has satisfied the other requirements described in sections 622 through 626; and

(c) The commissioner has made such examination and procured whatever additional information he deems advisable.

(3) Every voluntary association so incorporated shall incur the obligations and enjoy the benefits thereof the same as though originally incorporated, and such corporation shall be deemed a continuation of the original voluntary association. The officers thereof shall serve through their respective terms as provided in the original articles of association, but their successors shall be elected and serve as provided in its articles of incorporation. Incorporation of a voluntary association shall not affect existing suits, claims or contracts.

Section 630. **Articles of incorporation, constitution and laws — Amendments — Synopsis — Certified copies as evidence.** (1) A domestic society may amend its articles of incorporation, constitution or laws in accordance with the provisions thereof by action of its supreme legislative or governing body at any regular or special meeting thereof or, if its articles of incorporation, constitution or laws so provide, by referendum. Such referendum may be held in accordance with the provisions of its articles of incorporation, constitution or laws by the vote of the voting members of the society, by the vote of delegates or representatives of voting members or by the vote of local lodges or branches. No amendment submitted for adoption by referendum shall be adopted unless, within six (6) months from the date of submission thereof, a majority of all of the voting members of the society shall have signified their consent to such amendment by one of the methods herein specified.

Domestic society may amend.

(2) No amendment to the articles of incorporation, constitution or laws of any domestic society shall take effect unless approved by the commissioner, who shall approve such amendment if he finds it has been duly adopted and is not inconsistent with any requirement of the laws of this state or with the character, objects and purposes of the society. Unless the commissioner disapproves any such amendment within sixty (60) days after the filing of same, such amendment shall be considered approved. The approval or disapproval of the commissioner shall be in writing and mailed to the secretary or corresponding officer of the society at its principal office. In case he disapproves the amendment, the reasons therefor shall be stated in the written notice.

Approval of amendments required.

Time of approval.

(3) Within ninety (90) days from the approval thereof by the commissioner, all such amendments, or a synopsis thereof, shall be furnished by the society to all members either by mail or by publication in full in the official organ of the society. The affidavit of any officer of the society or of anyone authorized by it to mail any amendments or synopsis thereof, stating facts which show that same have been duly addressed and mailed, shall be prima facie evidence that such amendments or synopsis thereof, have been furnished the addressee.

Copies furnished to members.

(4) Every foreign or alien society authorized to do business in this state shall file with the commissioner a duly certified copy of all amendments of, or additions to, its articles of incorporation, constitution or laws within ninety (90) days after the enactment of same.

Filing of amendments—foreign or alien societies.

(5) Printed copies of the constitution or laws as amended, certified by the secretary or corresponding officer of the society shall be prima facie evidence of the legal adoption thereof.

Effect as evidence.

Section 631. **Waiver.** The constitution and laws of the society may provide that no subordinate body, nor any of its subordinate officers or members shall have the power or authority to waive any of the provisions of the laws and constitution of the society. Such provision shall be binding on the society and every member and beneficiary of a member.

Society may deny authority to waive.

Section 632. **Location of office — Place of meeting —**

Principal office.

Records in English language. (1) The principal office of any domestic society shall be located in this state. The

Meetings.

meetings of its supreme legislative or governing body may be held in any state, district, province or territory wherein such society has at least five (5) subordinate branches and all business transacted at such meetings shall be as valid in all respects as if such meetings were held in this state.

Minutes in English.

(2) The minutes of the proceedings of the supreme or governing body and of the board of directors or corresponding body of a society shall be in the English language.

Power to hold real property for institutions.

Section 633. **Institutions.** (1) It shall be lawful for a society to create, maintain and operate charitable, benevolent or educational institutions for the benefit of its members and their families and dependents and for the benefit of children insured by the society. For such purpose it may own, hold or lease personal property or real property located within or without this state, with necessary buildings thereon. Such property shall be reported in every annual statement but shall not be allowed as an admitted asset of such society.

Institutions not operated for profit.

(2) Maintenance, treatment and proper attendance in any such institution may be furnished free or a reasonable charge may be made therefor, but no such institution shall be operated for profit. The society shall maintain a separate accounting of any income and disbursements under this section and report them in its annual statement.

Ownership of funeral homes prohibited.

(3) No society shall own or operate funeral homes or undertaking establishments.

Qualifications for membership.

Section 634. **Qualifications for membership.** A society may admit to benefit membership any person not less than fifteen (15) years of age, nearest birthday, who has furnished evidence of insurability acceptable to the society. Any such member who shall apply for additional benefits more than six (6) months after becoming a benefit member shall furnish additional evidence of insurability acceptable to the society.

Rights and privileges—minors, social members.

Any person admitted prior to attaining the full age of twenty-one (21) years shall be bound by the terms of

the application and certificate and by all the laws and rules of the society and shall be entitled to all the rights and privileges of membership therein to the same extent as though the age of majority had been attained at the time of application. A society may also admit general or social members who shall have no voice or vote in the management of its insurance affairs.

Section 635. **Member's share of deficiency.** A society shall provide in its constitution or laws that if its reserves as to all or any class of certificates become impaired its board of directors or corresponding body may require that there shall be paid by the member to the society the amount of the member's equitable proportion of such deficiency as ascertained by its board, and that if the payment be not made it shall stand as an indebtedness against the member's certificate and draw interest not to exceed five percent (5%) per annum compounded annually.

Provision for member's share of deficiency.

Section 636. **Benefits.** (1) A society authorized to do business in this state may provide for the payment of:

Provision for benefits.

- (a) Death benefits in any form;
- (b) Endowment benefits;
- (c) Annuity benefits;
- (d) Temporary or permanent disability benefits as a result of disease or accident;
- (e) Hospital, medical or nursing benefits due to sickness or bodily infirmity or accident; and
- (f) Monument or tombstone benefits to the memory of deceased members not exceeding in any case the sum of three hundred dollars (\$300).

(2) Such benefits may be provided on the lives of members or, upon application of a member, on the lives of a member's family, including the member, the member's spouse and minor children, in the same or separate certificates.

Section 637. **Benefits on lives of children.** (1) A society may provide for benefits on the lives of children

Provision for benefits on lives of minors.

under the minimum age for adult membership but not greater than twenty-one (21) years of age at time of application therefor, upon the application of some adult person, as its laws or rules may provide, which benefits shall be in accordance with the provisions of section 636 of this chapter. A society may, at its option, organize and operate branches for such children. Membership and initiation in local lodges shall not be required of such children, nor shall they have a voice in the management of the society.

Provision
for changing
beneficiaries.

(2) A society shall have power to provide for the designation and changing of designation of beneficiaries in the certificates providing for such benefits and to provide in all other respects for the regulation, government and control of such certificates and all rights, obligations and liabilities incident thereto and connected therewith.

Powers to grant
paid-up
nonforfeiture
benefits, cash
surrender values,
loans, other
lawful options.

Section 638. **Nonforfeiture benefits, cash surrender values, certificate loans and other options.** (1) A society may grant paid-up nonforfeiture benefits, cash surrender values, certificate loans and such other options as its laws may permit. As to certificates issued on and after the effective date of this chapter, a society shall grant at least one paid-up nonforfeiture benefit, except in the case of pure endowment, annuity or reversionary annuity contracts, reducing term insurance contracts or contracts of term insurance of uniform amount of fifteen (15) years or less expiring before age sixty-six (66).

Computation
of values.

(2) In the case of certificates other than those for which reserves are computed on the commissioners 1941 standard ordinary mortality table or the 1941 standard industrial table, the value of every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan or other option granted shall not be less than the excess, if any, of (a) over (b) as follows:

(a) The reserve under the certificate determined on the basis specified in the certificate; and

(b) The sum of any indebtedness to the society on the certificate, including interest due and accrued, and a surrendered charge equal to two and one-half percent (2½%) of the face amount of the certificate, which, in the case of insurance on the lives of children, shall be

the ultimate face amount of the certificate, if death benefits provided therein are graded.

(3) However, in the case of certificates issued on a substandard basis or in the case of certificates, the reserves for which are computed upon the American men ultimate table of mortality, the term of any extended insurance benefit granted including accompanying pure endowment, if any, may be computed upon the rates of mortality not greater than one hundred thirty percent (130%) of those shown by the mortality table specified in the certificate for the computation of the reserve.

(4) In the case of certificates for which reserves are computed on the commissioners 1941 standard ordinary mortality table or the 1941 standard industrial table, every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan or other option granted shall not be less than the corresponding amount ascertained in accordance with the provisions of the laws of this state applicable to life insurers issuing policies containing like insurance benefits based upon such tables.

Section 639. **Beneficiaries.** (1) The member shall have the right at all times to change the beneficiary or beneficiaries in accordance with the constitution, laws or rules of the society. Every society by its constitution, laws or rules may limit the scope of beneficiaries and shall provide that no beneficiary shall have or obtain any vested interest in the proceeds of any certificate until the certificate has become due and payable in conformity with the provisions of the insurance contract.

Beneficiaries—
right to change

Society may
limit scope.

(2) A society may make provision for the payment of funeral benefits to the extent of such portion of any payment under a certificate as might reasonably appear to be due to any person equitably entitled thereto by reason of having incurred expense occasioned by the burial of the member, but the portion so paid shall not exceed the sum of five hundred dollars (\$500).

Funeral benefits
limited to \$500.

If, at the death of any member, there is no lawful beneficiary to whom the insurance benefits are payable, the amount of such benefits, except to the extent that funeral benefits may be paid as hereinbefore provided,

Payment of
death benefits.

shall be payable to the personal representative of the deceased member.

Benefits exempt from attachment.

Section 640. **Benefits not attachable.** No money or other benefit, charity, relief or aid to be paid, provided or rendered by any society, shall be liable to attachment, garnishment or other process, or to be seized, taken, appropriated or applied by any legal or equitable process or operation of law to pay any debt or liability of a member or beneficiary, or any other person who may have a right thereunder, either before or after payment by the society.

No personal liability for payment of benefits.

Section 641. **No personal liability.** The officers and members of the supreme, grand or any subordinate body of a society shall not be personally liable for payment of any benefits provided by a society.

Contract defined.

Section 642. **The contract.** (1) Every society authorized to do business in this state shall issue to each benefit member a certificate specifying the amount of benefits provided thereby. The certificate, together with any riders or endorsements attached thereto, the charter or articles of incorporation, the constitution and laws of the society, the application for membership, and declaration of insurability, if any, signed by the applicant, and all amendments to each thereof, shall constitute the agreement, as of the date of issuance, between the society and the member, and the certificate shall so state. A copy of the application for membership and of the declaration of insurability, if any, shall be endorsed upon or attached to the certificate.

Statements of members.

(2) All statements purporting to be made by the member shall be representations and not warranties. Any waiver of this provision shall be void.

Subsequent amendments binding on members.

(3) Any changes, additions or amendments to the charter or articles of incorporation, constitution or laws duly made or enacted subsequent to the issuance of the certificate, shall bind the member and the beneficiaries, and shall govern and control the agreement in all respects the same as though such changes, additions or amendments had been made prior to and were in force at the time of the application for membership, except that no change, addition, or amendment shall destroy or diminish

Exception—no diminution of benefits.

benefits which the society contracted to give the member as of the date of issuance.

(4) Copies of any of the documents mentioned in this section, certified by the secretary or corresponding officer of the society, shall be received in evidence of the terms and conditions thereof.

Certified copies as evidence.

Section 643. **Standard provision.** (1) After one year from the effective date of this chapter, no life benefit certificate shall be delivered or issued for delivery in this state unless a copy of the form has been filed with the commissioner.

Form of life benefit certificate filed with commissioner.

(2) The certificate shall contain in substance the following standard provisions or, in lieu thereof, provisions which are more favorable to the member:

Standard provisions required.

(a) Title on the face and filing page of the certificate clearly and correctly describing its form;

Title.

(b) A provision stating the amount of rates, premiums or other required contributions, by whatever name known, which are payable by the insured under the certificate;

Rates.

(c) A provision that the member is entitled to a grace period of not less than a full month (or thirty (30) days at the option of the society) in which the payment of any premium after the first, may be made. During such grace period the certificate shall continue in full force, but in case the certificate becomes a claim during the grace period before the overdue payment is made, the amount of such overdue payment or payments may be deducted in any settlement under the certificate;

Grace period.

(d) A provision that the member shall be entitled to have the certificate reinstated at any time within three (3) years from the due date of the premium in default, unless the certificate has been completely terminated through the application of a nonforfeiture benefit, cash surrender value or certificate loan, upon the production of evidence of insurability satisfactory to the society and the payment of all overdue premiums and any other indebtedness to the society upon the certificate, together with interest on such premiums and such in-

Reinstatement.

debtedness, if any, at a rate not exceeding six percent (6%) per annum compounded annually;

Paid-up
nonforfeiture
benefit.

(e) Except in the case of pure endowment, annuity or reversionary annuity contracts, reducing term insurance contracts, or contracts of term insurance of uniform amount of fifteen (15) years or less expiring before age sixty-six (66), a provision that, in the event of default in payment of any premium after three (3) full years' premiums have been paid or after premiums for a lesser period have been paid if the contract so provides, the society will grant, upon proper request not later than sixty (60) days after the due date of the premium in default, a paid-up nonforfeiture benefit on the plan stipulated in the certificate, effective as of such due date, of such value as specified in this chapter. The certificate may provide, if the society's laws so specify or if the member shall so elect prior to the expiration of the grace period of any overdue premium, that default shall not occur so long as premiums can be paid under the provisions of an arrangement for automatic premium loan as may be set forth in the certificate;

Election of paid-up
nonforfeiture
benefit.

(f) A provision that one paid-up nonforfeiture benefit as specified in the certificate shall become effective automatically unless the member elects another available paid-up nonforfeiture benefit, not later than sixty (60) days after the due date of the premium in default;

Mortality table.

(g) A statement of the mortality table and rate of interest used in determining all paid-up nonforfeiture benefits and cash surrender options available under the certificate, and a brief general statement of the method used in calculating such benefits;

Table of values.

(h) A table showing in figures the value of every paid-up nonforfeiture benefit and cash surrender option available under the certificate for each certificate anniversary either during the first twenty (20) certificate years or during the term of the certificate whichever is shorter;

Incontestability.

(i) A provision that the certificate shall be incontestable after it has been in force during the lifetime of the member for a period of two (2) years from its date of issue except for nonpayment of premiums, violation

of the provisions of the certificate relating to military, aviation, or naval service and violation of the provisions relating to suspension or expulsion as substantially set forth in the certificate. At the option of the society, supplemental provisions relating to benefits in the event of temporary or permanent disability or hospitalization and provisions which grant additional insurance specifically against death by accident or accidental means, may also be excepted. The certificate shall be incontestable on the grounds of suicide after it has been in force during the lifetime of the member for a period of two (2) years from date of issue. The certificate may provide, as to statements made to procure reinstatement, that the society shall have the right to contest a reinstated certificate within a period of two (2) years from date of reinstatement with the same exceptions as herein provided;

(j) A provision that in case the age of the member or of any other person is considered in determining the premium and it is found at any time before final settlement under the certificate that the age has been misstated, and the discrepancy and premium involved have not been adjusted, the amount payable shall be such as the premium would have purchased at the correct age; but if the correct age was not an insurable age under the society's charter or laws, only the premiums paid to the society, less any payments previously made to the member, shall be returned or, at the option of the society, the amount payable under the certificate shall be such as the premium would have purchased at the correct age according to the society's promulgated rates and any extension thereof based on actuarial principles;

Readjustment—
misstatement
of age.

(k) A provision or provisions which recite fully, or which set forth the substance of, all sections of the charter, constitution, laws, rules or regulations of the society, in force at the time of issuance of the certificate, the violation of which will result in the termination of, or in the reduction of, the benefit or benefits payable under the certificate; and

Applicable
substance
of charter,
constitution,
laws, rules.

(l) If the constitution or laws of the society provide for expulsion or suspension of a member, any member so expelled or suspended, except for non-payment of a

Expulsion or
suspension
of member.

premium or within the contestable period for material misrepresentations in such member's application for membership shall have the privilege of maintaining his insurance in force by continuing payment of the required premium.

When provisions may be omitted.

(3) Any of the foregoing provisions or portions thereof not applicable by reason of the plan of insurance or because the certificate is an annuity certificate may, to the extent inapplicable, be omitted from the certificate.

Prohibited provisions—life benefit certificate.

Section 644. **Prohibited provisions.** After one year from the effective date of this chapter, no life benefit certificate shall be delivered or issued for delivery in this state containing in substance any of the following provisions:

(1) Any provision limiting the time within which any action at law or in equity may be commenced to less than two (2) years after the cause of action accrues;

(2) Any provision by which the certificate purports to be issued or to take effect more than six (6) months before the original application for the certificate was made, except in case of transfer from one form of certificate to another in connection with which the member is to receive credit for any reserve accumulation under the form of certificate from which the transfer is made; or

(3) Any provision for forfeiture of the certificate for failure to repay any loan thereon or to pay interest on such loan while the total indebtedness, including interest, is less than the loan value of the certificate.

"Premiums" defined.

Section 645. **"Premiums" defined.** As used in this chapter "premiums" means premiums, rates, or other required contributions by whatever name known.

Forms for accident and health insurance must be filed with commissioner.

Section 646. **Accident and health insurance and total and permanent disability insurance certificates—Filing and approval.** (1) No domestic, foreign or alien society authorized to do business in this state shall issue or deliver in this state any certificate or other evidence of any contract of accident insurance or health insurance or of any total and permanent disability insurance contract unless and until the form thereof, together with the

form of application and all riders or endorsements for use in connection therewith, shall have been filed with the commissioner.

(2) The commissioner shall have power, from time to time, to make, alter and supersede reasonable regulations prescribing the required, optional and prohibited provisions in such contracts, and such regulations shall conform, as far as practicable, to the provisions of chapter 15 of this code (disability insurance policies). Where the commissioner deems inapplicable, either in part or in their entirety, the provisions of chapter 15, he may prescribe the portions or summary thereof of the contract to be printed on the certificate issued to the member.

Power of commissioner to alter forms.

(3) Any filing made hereunder shall be deemed approved unless disapproved within sixty (60) days from the date of such filing.

Time of approval.

Section 647. **Reinsurance.** A domestic society may, by a reinsurance agreement, cede any individual risk or risks in whole or in part to an insurer (other than another fraternal benefit society) having the power to make such reinsurance and authorized to do business in this state, or if not so authorized, one which is approved by the commissioner; but no such society may reinsure substantially all of its insurance in force without the written permission of the commissioner. It may take credit for the reserves on such ceded risks to the extent reinsured, but no credit shall be allowed as an admitted asset or as a deduction from liability, to a ceding society for reinsurance made, ceded, renewed, or otherwise becoming effective after the effective date of this chapter, unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding society under the contract or contracts reinsured without diminution because of the insolvency of the ceding society.

Power of domestic society to reinsure.

Section 648. **Funds.** (1) All assets shall be held, invested and disbursed for the use and benefit of the society and no member or beneficiary shall have or acquire individual rights therein or become entitled to any apportionment or the surrender of any part thereof, except as provided in the contract.

Assets held for use and benefit of society.

(2) A society may create, maintain, invest, disburse

Special funds.

and apply any special fund or funds necessary to carry out any purpose permitted by the laws of such society.

Purpose of payment.

(3) Every society, the admitted assets of which are less than the sum of its accrued liabilities and reserves under all of its certificates when valued according to standards required for certificates issued after one year from the effective date of this chapter, shall, in every provision of the laws of the society for payments by members of such society, in whatever form made, distinctly state the purpose of the same and the proportion thereof which may be used for expenses, and no part of the money collected for mortuary or disability purposes or the net accretions thereto shall be used for expenses.

Expenses limited.

Lawful investments.

Section 649. **Investments.** A society shall invest its funds only in such investments as are authorized by the laws of this state for the investment of assets of life insurers and subject to the limitations thereon. Any foreign or alien society permitted or seeking to do business in this state which invests its funds in accordance with the laws of the state, district, territory, country or province in which it is incorporated, shall be held to meet the requirements of this section for the investment of funds.

Section 650. **Annual statement.** (1) Reports shall be filed and synopsis of annual statements shall be published in accordance with the provisions of this section.

Filing of annual statement required.

(2) Every society transacting business in this state shall annually, on or before the first day of March, unless for cause shown such time has been extended by the commissioner, file with the commissioner a true statement of its financial condition, transactions and affairs for the preceding calendar year and pay a fee of twenty-five dollars (\$25) for filing same. The statement shall be in general form and context as approved by the national association of insurance commissioners for fraternal benefit societies and as supplemented by additional information required by the commissioner.

Printed synopsis to members.

(3) A synopsis of its annual statement providing an explanation of the facts concerning the condition of the society thereby disclosed shall be printed and mailed to each benefit member of the society not later than June

1 of each year, or, in lieu thereof, such synopsis may be published in the society's official publication.

Section 651. **Annual valuation of certificates.** (1) As a part of the annual statement required under section 650, each society shall, on or before the first day of March, file with the commissioner a valuation of its certificates in force on December 31 last preceding, provided, the commissioner may, in his discretion for cause shown, extend the time for filing such valuation for not more than two (2) calendar months. Such report of valuation shall show, as reserve liabilities, the difference between the present mid-year value of the promised benefits provided in the certificates of such society in force and the present mid-year value of the future net premiums as the same are in practice actually collected, not including therein any value for the right to make extra assessments and not including any amount by which the present mid-year value of future net premiums exceeds the present mid-year value of promised benefits on individual certificates. At the option of any society, in lieu of the above, the valuation may show the net tabular value. Such net tabular value as to certificates issued prior to one year after the effective date of this chapter shall be determined in accordance with the provisions of law applicable prior to the effective date of this chapter and as to certificates issued on or after one year from the effective date of this chapter shall not be less than the reserves determined according to the commissioners' reserve valuation method as hereinafter defined. If the premium charged is less than the tabular net premium according to the basis of valuation used, an additional reserve equal to the present value of the deficiency in such premiums shall be set up and maintained as a liability. The reserve liabilities shall be properly adjusted in the event that the mid-year or tabular values are not appropriate.

Filing of annual valuation of certificates required.

Reserve liabilities.

Net tabular value.

Additional reserve.

(2) Reserves according to the commissioners' reserve valuation method, for the life insurance and endowment benefits of certificates providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such certificates, over the then

Computation of reserves for life insurance and endowment benefits.

Modified net
premiums defined.

Computation.

present value of any future modified net premiums therefor. The modified net premiums for any such certificate shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the certificate, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the certificate and the excess of (a) over (b), as follows:

(a) A net level premium equal to the present value, at the date of issue, of such benefits provided for after the first certificate year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such certificate on which a premium falls due; provided however, that such net level annual premium shall not exceed the net level annual premium on the nineteen year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such certificate; and

(b) A net one-year term premium for such benefits provided for in the first certificate year.

Computation of
other reserves.

(3) Reserves according to the commissioners' reserve valuation method for (a) life insurance benefits for varying amounts of benefits or requiring the payment of varying premiums, (b) annuity and pure endowment benefits, (c) disability and accidental death benefits in all certificates and contracts, and (d) all other benefits except life insurance and endowment benefits, shall be calculated by a method consistent with the principles of subsection (2), above.

Value of deferred
payments
deemed liability.

(4) The present value of deferred payments due under incurred claims or matured certificates shall be deemed a liability of the society and shall be computed upon mortality and interest standards prescribed in subsections (6) and (7) below.

Valuation
certified
by actuary.

(5) Such valuation and underlying data shall be certified by a competent actuary or, at the expense of the society, verified by the actuary of the department of insurance of the state of domicile of the society.

(6) The minimum standards of valuation for certificates issued prior to one year from the effective date of

this chapter shall be those provided by the law applicable immediately prior to the effective date of this chapter but not lower than the standards used in the calculating of rates for such certificates.

Minimum
standards of
valuation—
existing
certificates.

(7) The minimum standard of valuation for certificates issued after one year from the effective date of this chapter shall be three and one-half percent ($3\frac{1}{2}\%$) interest and the following tables:

Minimum
standards
of valuation—
certificates
issued after
one year from
effective date.

(a) For certificates of life insurance—American men ultimate table of mortality, with Bowerman's or Davis' extension thereof or with the consent of the commissioner, the commissioner's 1941 standard ordinary mortality table or the commissioner's 1941 standard industrial table of mortality;

(b) For annuity certificates, including life annuities provided or available under optional modes of settlement in such certificates—the 1937 standard annuity table;

(c) For disability benefits issued in connection with life benefit certificates—Hunter's disability table, which, for active lives, shall be combined with a mortality table permitted for calculating the reserves on life insurance certificates, except that the table known as class III disability table (1926) modified to conform to the contractual waiting period, shall be used in computing reserves for disability benefits under a contract which presumes that total disability shall be considered to be permanent after a specified period;

(d) For accidental death benefits issued in connection with life benefit certificates—the inter-company double indemnity mortality table combined with a mortality table permitted for calculating the reserves for life insurance certificates; and

(e) For non-cancellable accident and health benefits—the class III disability table (1926) with conference modifications or, with the consent of the commissioner, tables based upon the society's own experience.

(8) The commissioner may, in his discretion, accept other standards for valuation if he finds that the reserves produced thereby will not be less in the aggregate than reserves computed in accordance with the minimum

Other
standards—
commissioner's
discretion.

valuation standard herein prescribed. The commissioner may, in his discretion, vary the standards of mortality applicable to all certificates of insurance on substandard lives or other extra hazardous lives by any society authorized to do business in this state. Whenever the mortality experience under all certificates valued on the same mortality table is in excess of the expected mortality according to such table for a period of three consecutive years, the commissioner may require additional reserves when deemed necessary in his judgment on account of such certificates.

Commissioner may require additional reserves.

Excess reserves permitted.

(9) Any society, with the consent of the insurance supervisory official of the state of domicile of the society and under such conditions, if any, which he may impose, may establish and maintain reserves on its certificates in excess of the reserves required hereunder, but the contractual rights of any insured member shall not be affected thereby.

Penalty on failure to file annual statement.

Section 652. **Annual statement — Penalty for failure to file or to comply.** A society neglecting to file the annual statement in the form and within the time provided by this section shall forfeit one hundred dollars (\$100) for each day during which such neglect continues, and, upon notice by the commissioner to that effect, its authority to do business in this state shall cease while such default continues.

Powers of commissioner to examine domestic societies.

Section 653. **Examination of domestic societies.** (1) The commissioner, or any person he may appoint, shall have the power of visitation and examination into the affairs of any domestic society and he shall make such examination at least once in every three (3) years. He may employ assistants for the purpose of such examination, and he, or any person he may appoint, shall have free access to all books, papers and documents that relate to the business of the society.

Witnesses under oath.

(2) In making any such examination the commissioner may summon and qualify as witnesses under oath and examine its officers, agents and employees or other persons in relation to the affairs, transactions and condition of the society.

(3) A summary of the report of the commissioner and

such recommendations or statements of the commissioner as may accompany such report, shall be read at the first meeting of the board of directors or corresponding body of the society following the receipt thereof, and if directed so to do by the commissioner, shall also be read at the first meeting of the supreme legislative or governing body of the society following the receipt thereof. A copy of the report, recommendations and statements of the commissioner shall be furnished by the society to each member of such board of directors or other governing body.

Reading of commissioner's report at meetings.

(4) The expense of each examination and of each valuation, including compensation and actual expense of examiners, shall be paid by the society examined or whose certificates are valued, upon statements furnished by the commissioner.

Expenses of examination.

Section 654. **Examination of foreign and alien societies.** The commissioner, or any person whom he may appoint, may examine any foreign or alien society transacting or applying for admission to transact business in this state. He may employ assistants and he, or any person he may appoint, shall have free access to all books, papers and documents that relate to the business of the society. He may in his discretion accept, in lieu of such examination, the examination of the insurance department of the state, territory, district, province or country where such society is organized. The compensation and actual expenses of the examiners making any examination or general or special valuation shall be paid by the society examined or by the society whose certificate obligations have been valued, upon statements furnished by the commissioner.

Powers of commissioner to examine foreign and alien societies.

Compensation and expenses.

Section 655. **No adverse publications.** Pending, during or after an examination or investigation of a society, either domestic, foreign or alien, the commissioner shall make public no financial statement, report or finding, nor shall he permit to become public any financial statement, report or finding affecting the status, standing or rights of any society, until a copy thereof shall have been served upon the society at its principal office and the society shall have been afforded a reasonable opportunity to answer any such financial statement, report or

Commissioner may not publish adverse information prior to service on society.

finding and to make such showing in connection therewith as it may desire.

Societies exempt from taxation.

Section 656. **Taxation.** Every society organized or licensed under this chapter is hereby declared to be a charitable and benevolent institution, and all of its funds shall be exempt from all and every state, county, district, municipal and school tax other than taxes on real estate and office equipment.

Agents must be licensed.

Section 657. **Licensing of agents.** (1) Agents of societies shall be licensed in accordance with the provisions of sections 657 through 661 of this chapter.

"Insurance agent" defined.

(2) Insurance agent defined: The term "insurance agent" as used in this chapter means any authorized or acknowledged agent of a society who acts as such in the solicitation, negotiation or procurement or making of a life insurance, accident and health insurance or annuity contract; except that the term "insurance agent" shall not include:

(a) Any regular salaried officer or employee of a licensed society who devotes substantially all of his services to activities other than the solicitation of fraternal insurance contracts from the public, and who receives for the solicitation of such contracts no commission or other compensation directly dependent upon the amount of business obtained; or

(b) Any agent or representative of a society who devotes or intends to devote, less than fifty percent (50%) of his time to the solicitation and procurement of insurance contracts for such society. Any person who in the preceding calendar year has solicited and procured life insurance contracts on behalf of any society in an amount of insurance in excess of fifty thousand dollars (\$50,000), or, in the case of any other kind or kinds of insurance which the society might write, on the persons of more than twenty-five (25) individuals and who has received or will receive a commission or other compensation therefor, shall be presumed to be devoting, or intending to devote, fifty percent (50%) of his time to the solicitation or procurement of insurance contracts for such society.

License required.

Section 658. **Agent license required.** (1) Any person

who in this state acts as insurance agent for a society without having authority so to do by virtue of a license issued and in force pursuant to the provisions of this chapter shall, except as provided in section 657 (2), be guilty of a misdemeanor.

Misdemeanor.

(2) No society doing business in this state shall pay any commission or other compensation to any person for any services in obtaining in this state any new contract of life, accident or health insurance, or any new annuity contract, except to a licensed insurance agent of such society and except an agent exempted under section 657 (2).

Compensation to unlicensed persons prohibited.

Section 659. **Qualifications, application for agents license.** (1) The commissioner may issue an agent's license to any person who has paid an annual license fee of five dollars (\$5) and who has complied with the requirements of this section, authorizing such licensee to act as an insurance agent on behalf of any society named in such license which is authorized to do business in this state.

License fee.

(2) Before any insurance agent's license shall be issued there shall be on file in the office of the commissioner the following documents:

Required documents.

(a) A written application by the prospective licensee in such form or forms and supplements thereto, and containing such information, as the commissioner may prescribe; and

Application.

(b) A certificate by the society which is to be named in such license, stating that such society has satisfied itself that the named applicant is trustworthy and competent to act as such insurance agent and that the society will appoint such applicant to act as its agent if the license applied for is issued by the commissioner. Such certificates shall be executed and acknowledged by an officer or managing agent of such society.

Certificate of appointment.

(3) No written or other examination shall be required of any individual seeking to be named as a licensee to represent a fraternal benefit society as its agent.

No examination required.

(4) The commissioner may refuse to issue or renew any insurance agent's license if in his judgment the pro-

Commissioner may refuse license for cause.

posed licensee is not trustworthy and competent to act as such agent, or has given cause for revocation or suspension of such license, or has failed to comply with any prerequisite for the issuance or renewal, as the case may be, of such license.

Section 660. Agents' licenses — Expiration, renewal.

Expiration.

(1) Every agent's license, and every renewal thereof, shall expire on December 31 of the even-numbered calendar year following the calendar year in which such license or renewal license was issued.

Renewal.

(2) If the application for a renewal license has been filed with the commissioner on or before December 31 of the year in which the existing license is to expire, such applicant named in such existing license may continue to act as insurance agent under such existing license, unless same shall be revoked or suspended, until the issuance by the commissioner of the renewal license or until the expiration of five (5) days after he has refused to renew such license and has served written notice of such refusal on the applicant. If the applicant shall, within thirty (30) days after such notice is given, notify the commissioner in writing of his request for a hearing on such refusal, the commissioner shall, within a reasonable time after receipt of such notice, grant such hearing, and he may, in his discretion, reinstate such license.

Notice, hearing on refusal.

Application for renewal by society.

Certificate of address.

(3) Any such renewal license of an insurance agent may be issued upon the application of the society named in the existing license. Such application shall be in the form or forms prescribed by the commissioner and shall contain such information as he may require. The application shall contain a certificate executed by the president, or by a vice president, a secretary, an assistant secretary, or corresponding officer by whatever name known, or by an employee expressly designated and authorized to execute such certificate of a domestic or foreign society or by the United States manager of an alien society, stating that the addresses therein given of the agents of such society for whom renewal licenses are requested therein have been verified in each instance immediately preceding the preparation of the application. Notwithstanding the filing of such application, the com-

missioner may, after reasonable notice to any such society, require that any or all agents of such society to be named as licensees in renewal licenses shall execute and file separate applications for the renewal of such licenses, as hereinbefore specified, and he may also require that each such application shall be accompanied by the certificate specified in section 659 (2) (b).

Commissioner may require individual application.

Section 661. Notice of termination of agent appointment. Every society shall, upon the termination of the appointment of any insurance agent licensed to represent it in this state, forthwith file with the commissioner a statement, in such form as he may prescribe, of the facts relative to such termination and the cause thereof. Every statement made pursuant to this section shall be deemed a privileged communication.

Notice of termination of agent's appointment.

Section 662. Suspension, revocation of agents license.

(1) The commissioner may revoke, or may suspend for such period as he may determine, any insurance agent's license if, after notice and hearing as specified in section 660 (2), he determines that the licensee has:

Suspension, revocation for cause after notice and hearing.

(a) Violated any provision of, or any obligation imposed by, this chapter, or has violated any law in the course of his dealings as agent;

(b) Made a material misstatement in the application for such license;

(c) Been guilty of fraudulent or dishonest practices;

(d) Demonstrated his incompetency or untrustworthiness to act as an insurance agent; or

(e) Been guilty of rebating as defined by the laws of this state applicable to life insurers.

(2) The revocation or suspension of any agent's license shall terminate forthwith the license of such agent. No individual whose license has been revoked shall be entitled to obtain any insurance agent's license under the provisions of this chapter for a period of one year after such revocation or, if such revocation be judicially reviewed, for one year after the final determination thereof affirming the action of the commissioner in revoking such license.

Effect of revocation, suspension.

Misrepresentations
prohibited.

Section 663. **Misrepresentation.** No person shall cause or permit to be made, issued or circulated in any form:

(1) Any misrepresentation or false or misleading statement concerning the terms, benefits or advantages of any fraternal insurance contract now issued or to be issued in this state, or the financial condition of any society;

(2) Any false or misleading estimate or statement concerning the dividends or shares of surplus paid or to be paid by any society on any insurance contract; or

(3) Any incomplete comparison of an insurance contract of one society with an insurance contract of another society or insurer for the purpose of inducing the lapse, forfeiture or surrender of any insurance contract. A comparison of insurance contracts is incomplete if it does not compare in detail:

(a) The gross rates, and the gross rates less any dividend or other reduction allowed at the date of the comparison; and

(b) Any increase in cash values, and all the benefits provided by each contract for the possible duration thereof as determined by the life expectancy of the insured; or if it omits from consideration:

(c) Any benefit or value provided in the contract;

(d) Any differences as to amount or period of rates; or

(e) Any differences in limitations or conditions or provisions which directly or indirectly affect the benefits.

In any determination of the incompleteness or misleading character of any comparison or statement, it shall be presumed that the insured had no knowledge of any of the contents of the contract involved.

Penalties.

(4) Any person who violates any provision of this section or knowingly receives any compensation or commission by or in consequence of such violation, shall upon conviction be punished by a fine not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or by imprisonment in the county jail not less

than thirty (30) days nor more than ninety (90) days, or both fine and imprisonment and shall in addition, be liable for a civil penalty in the amount of three (3) times the sum received by such violator as compensation or commission, which penalty may be sued for and recovered by any person or society aggrieved for his or its own use and benefit in accordance with the provisions of civil practice.

Section 664. **Discrimination and rebates.** (1) No society doing business in this state shall make or permit any unfair discrimination between insured members of the same class and equal expectation of life in the premiums charged for certificates of insurance, in the dividends or other benefits payable thereon or in any other of the terms and conditions of the contracts it makes.

Unfair
discrimination
prohibited.

(2) No society, by itself, or any other party, and no agent or solicitor, personally, or by any other party, shall offer, promise, allow, give, set off, or pay, directly or indirectly, any valuable consideration or inducement to, or for insurance, on any risk authorized to be taken by such society, which is not specified in the certificate. No member shall receive or accept, directly or indirectly, any rebate of premium, or part thereof, or agent's or solicitor's commission thereon, payable on any certificate or receive or accept any favor or advantage or share in the dividends or other benefits to accrue on, or any valuable consideration or inducement not specified in the contract of insurance.

Rebates
prohibited.

Section 665. **Service of process.** (1) Every society authorized to do business in this state shall appoint in writing the commissioner and each successor in office to be its true and lawful attorney upon whom all lawful process in any action or proceeding against it shall be served, and shall agree in such writing that any lawful process against it which is served on said attorney shall be of the same legal force and validity as if served upon the society, and that the authority shall continue in force so long as any liability remains outstanding in this state. Copies of such appointment, certified by the commissioner, shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as the original thereof might be admitted.

Service of
process—
commissioner
as attorney.

Procedure for
service of process.

(2) Service shall only be made upon the commissioner, or if absent, upon the person in charge of his office. It shall be made in duplicate and shall constitute sufficient service upon the society. When legal process against a society is served upon the commissioner, he shall forthwith forward one of the duplicate copies by registered mail, prepaid, directed to the secretary or corresponding officer. No such service shall require a society to file its answer, pleading or defense in less than thirty (30) days from the date of mailing the copy of the service to a society. Legal process shall not be served upon a society except in the manner herein provided. At the time of serving any process upon the commissioner, the plaintiff or complainant in the action shall pay to the commissioner a fee of two dollars (\$2).

Domestic societies
may consolidate
or merge.

Section 666. **Consolidations and mergers.** (1) A domestic society may consolidate or merge with any other society by complying with the provisions of this section. It shall file with the commissioner:

Procedure.

Copy of contract.

(a) A certified copy of the written contract containing in full the terms and conditions of the consolidation or merger;

Financial
statement.

(b) A sworn statement by the president and secretary or corresponding officers of each society showing the financial condition thereof on a date fixed by the commissioner but not earlier than December 31, next preceding the date of the contract;

Certificate of
approval by
governing body.

(c) A certificate of such officers, duly verified by their respective oaths, that the consolidation or merger has been approved by a two-thirds vote of the supreme legislative or governing body of each society; and

Evidence of advice
to members.

(d) Evidence that at least sixty (60) days prior to the action of the supreme legislative or governing body of each society, the text of the contract has been furnished to all members of each society either by mail or by publication in full in the official organ of each society.

Affidavit
of mailing.

(2) The affidavit of any officer of the society or of anyone authorized by it to mail any notice or document, stating that such notice or document has been duly addressed and mailed, shall be prima facie evidence that

such notice or document has been furnished the addressees.

(3) If the commissioner finds that the contract is in conformity with the provisions of this section, that the financial statements are correct and that the consolidation or merger is just and equitable to the members of each society, he shall approve the contract and issue his certificate to such effect. Upon such approval, the contract shall be in full force and effect unless any society which is a party to the contract is incorporated under the laws of any other state. In such event the consolidation or merger shall not become effective unless and until it has been approved as provided by the laws of such state and a certificate of such approval filed with the commissioner or, if the laws of such state contain no such provision, then the consolidation or merger shall not become effective unless and until it has been approved by the insurance supervisory official of such state and a certificate of such approval filed with the commissioner.

Approval of
merger or
consolidation by
commissioner.

Section 667. **Consolidations and mergers — Effect.** Upon the consolidation or merger becoming effective as provided in section 666, all the rights, franchises and interests of the consolidated or merged societies in and to every species of property, real, personal or mixed, and things in action thereunto belonging shall be vested in the society resulting from or remaining after the consolidation or merger without any other instrument; except that conveyances of real property may be evidenced by proper deeds, and the title to any real estate or interest therein, vested under the laws of this state in any of the societies consolidated or merged, shall not revert or be in any way impaired by reason of the consolidation or merger, but shall vest absolutely in the society resulting from or remaining after such consolidation or merger.

Effect of merger
or consolidation.

Section 668. **Conversion into mutual life insurer.** Any domestic fraternal benefit society may be converted and licensed as a mutual life insurer by compliance with the applicable requirements of chapter 22 of this code, if such plan of conversion has been approved by the commissioner. Such plan shall be prepared in writing setting

Domestic society
may convert
to mutual
life insurer.

Approval by
governing body.

forth in full the terms and conditions thereof. The board of directors shall submit the plan to the supreme legislative or governing body of such society at any regular or special meeting thereof, by giving a full, true and complete copy of the plan with the notice of such meeting. The notice shall be given as provided in the laws of the society for the convocation of a regular or special meeting of such body, as the case may be. The affirmative vote of two-thirds of all members of such body shall be necessary for the approval of the agreement. No such conversion shall take effect unless and until approved by the commissioner, who may give such approval if he finds that the proposed change is in conformity with the requirements of law and not prejudicial to the certificate holders of the society.

Approval by
commissioner.Legal remedies
available to
commissioner.

Section 669. **Injunction — Liquidation — Receivership of domestic society.** (1) When the commissioner upon investigation finds that a domestic society:

- (a) Has exceeded its powers;
- (b) Has failed to comply with any provision of this chapter;
- (c) Is not fulfilling its contracts in good faith;
- (d) Has a membership of less than four hundred (400) after an existence of one year or more; or
- (e) Is conducting business fraudulently or in a manner hazardous to its members, creditors, the public or the business; he shall notify the society of his findings, state in writing the reasons for his dissatisfaction, and require the society to show cause on a date named why it should not be enjoined from carrying on any business until the violation complained of shall have been corrected, or why an action in quo warranto should not be commenced against the society.

Action by
attorney general.

- (2) If on such date the society does not present good and sufficient reasons why it should not be so enjoined or why such action should not be commenced, the commissioner may present the facts relating thereto to the attorney general who shall, if he deems the circumstances warrant, commence an action to enjoin the society from transacting business or in quo warranto. The

court shall thereupon notify the officers of the society of a hearing. If after a full hearing it appears that the society should be so enjoined or liquidated or a receiver appointed, the court shall enter the necessary order.

- (3) No society so enjoined shall have the authority to do business until:

Effect of
injunction.

- (a) The commissioner finds that the violation complained of has been corrected;

- (b) The costs of such action have been paid by the society if the court finds that the society was in default as charged;

- (c) The court has dissolved its injunction; and

- (d) The commissioner has reinstated the society's license.

- (4) If the court orders the society liquidated, it shall be enjoined from carrying on any further business, whereupon the receiver of the society shall proceed at once to take possession of the books, papers, money and other assets of the society and, under the direction of the court, proceed forthwith to close the affairs of the society and to distribute its funds to those entitled thereto.

Injunction
on order to
liquidate.

- (5) No action under this section shall be recognized in any court of this state unless brought by the attorney general upon request of the commissioner. Whenever a receiver is to be appointed for a domestic society, the court shall appoint the commissioner as such receiver.

Commissioner
appointed
receiver.

- (6) The provisions of this section relating to hearing by the commissioner, action by the attorney general at the request of the commissioner, hearing by the court, injunction and receivership shall be applicable to a society which voluntarily determines to discontinue business.

Society
voluntarily
discontinuing
business.

Section 670. **Injunction.** No application or petition for injunction against any domestic, foreign or alien society, or branch thereof, shall be recognized in any court of this state unless made by the attorney general upon request of the commissioner.

No injunction
to issue except
on application of
attorney general.

Section 671. **Review.** All decisions and findings of

Judicial review.

the commissioner made under the provisions of this chapter shall be subject to review by the court in accordance with the provisions of section 44 of this code.

Schedule of other
applicable
provisions.

Section 672. **Other provisions applicable.** In addition to the provisions contained in this chapter, other chapters and provisions of this code shall apply to fraternal benefit societies, to the extent applicable and not in conflict with the express provisions of this chapter and the reasonable implications thereof, as follows:

- (1) Chapter 1 (scope of code).
- (2) Chapter 2 (the commissioner of insurance), with the exception of section 45 (fees and licenses).
- (3) The following sections of chapter 3 (authorization of insurers and general requirements):
 - (a) Section 50 (name of insurer).
 - (b) Section 55 (management and affiliations).
- (4) Section 176 (representing or aiding unauthorized insurer prohibited).
- (5) Chapter 10 (trade practices and frauds).
- (6) Section 288 (minor may give acquittance).
- (7) Section 440 (prohibited pecuniary interest of officials).
- (8) Section 467 (extinguishment of unused corporate charters).
- (9) Chapter 26 (rehabilitations and liquidations).

Section 673. That section 25-101; sections 40-101 through 40-105; sections 40-201 through 40-218; sections 40-301 through 40-323; sections 40-401 through 40-415; sections 40-501 through 40-517; sections 40-601 through 40-609; sections 40-701 through 40-706; section 40-801; sections 40-901 through 40-905; sections 40-1001 through 40-1005; sections 40-1101 through 40-1118; section 40-1204; section 40-1301; section 40-1302 as amended by section 1, chapter 74, Laws of Montana, 1957; sections 40-1303 through 40-1333; sections 40-1401 through 40-1441; sections 40-1501 through 40-1517; sections 40-1601 through 40-1625; sections 40-1701, 40-1702; sections 40-

1704 through 40-1722; section 40-1726; sections 40-1801 through 40-1820; sections 40-1901 through 40-1946; sections 40-2001 through 40-2012; sections 40-2101 through 40-2138; sections 40-2201 through 40-2212; sections 40-2301 through 40-2310; sections 40-2401 through 40-2412; section 40-2413 as amended by section 1, chapter 108, Laws of Montana, 1955; sections 40-2414 through 40-2416; and sections 40-2501 through 40-2513, Revised Codes of Montana, 1947, and all acts and parts of acts in conflict herewith are hereby repealed.

Approved March 18, 1959.

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APPROPRIATIONS, MEMORIALS AND RESOLUTIONS

ENACTED BY THE

Thirty-Sixth Legislative Assembly

STATE OF MONTANA

1959
